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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1954

No. 69

JOE VALDEZ GONZALES, PETITIONER,

vs.

UNITED STATES OF AMERICA

**ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

PETITION FOR CERTIORARI FILED MAY 10, 1954

CERTIORARI GRANTED OCTOBER 14, 1954

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DOCKET ENTRIES

1953

May 11 Indictment and Report filed
May 13 Warrant issued
May 14 Appearance
May 14 Arraignment - has counsel, Harold E. Leithauser stands mute, plea of not guilty entered - Bond \$2500.00
May 14 Bond in \$2500.00 filed - Arthur L. Woodham Surety
May 15 Transcript filed
June 14 Warrant filed
July 7 Waiver of trial by jury filed
July 7 Trial before the Court held and continued to July 8, 1953, Arthur J. Koscinski
July 8 Trial resumed and case taken under advisement with leave to file briefs
July 13 Motion for Judgment of acquittal filed
July 13 Subpoena filed
July 21 Appearance for defendant filed
September 22 Order denying motion for Judgment of Acquittal and finding defendant guilty, filed and entered - Arthur J. Koscinski
October 26 Defendant sent to imprisonment for three years and pays fine of \$500.00 - bond cancelled - Arthur J. Koscinski
October 26 Commitment issued
October 26 Notice of Appeal of Defendant filed - \$5.00
October 27 Proof of mailing filed
October 29 Transcript filed

INDICTMENT

THE GRAND JURY CHARGES:

That on or about February 19, 1953, in the Eastern District of Michigan, Southern Division, JOE VALDEZ GONZALES, after having been duly and regularly notified to report for induction by Michigan Local Draft Board No. 95, Wayne County, Michigan, did report for induction but refused to submit to induction; in violation of Section 462(b) U. S. C. Title 50 Appendix.

This is a true bill.

[Signature]
Foreman.

KENNETH W. SMITH
Assistant U. S. Attorney

TRANSCRIPT OF PROCEEDINGS AND TESTIMONY

[Tr. 1]

DISTRICT COURT OF THE UNITED STATES

EASTERN DISTRICT OF MICHIGAN

SOUTHERN DIVISION

UNITED STATES OF AMERICA, Plaintiff, }
vs. } Criminal Docket #33712
JOE VALDEZ GONZALES, Defendant. }

Proceedings had and testimony taken in the trial of the above-entitled case before the Honorable Arthur A. Koscinski, District Judge, at the Federal Building, Detroit, Michigan, commencing on Tuesday, Juiy 7, 1953.

* * *

[Tr. 5]

THE COURT: Do I understand that in this case, as in the other cases, there is a waiver of a trial by jury? Is that correct?

MR. LEITHAUSER: That is correct, your Honor.

* * *

[Tr. 6]

JEAN GERTRUDE COCKERILL was thereupon called as a witness on behalf of the Government and, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. GREENBERG:

Q Mrs. Cockerill, you are the Clerk of the Local Board 95?

A I am.

Q That Board is in Wayne County?

Jean Gertrude Cockerill, direct (Gov't)

[Tr. 7]

A Yes.

Q Do you have the file for one Joe Valdez Gonzales?

A Yes.

Q I can't hear you. Louder, please.

A Yes.

MR. GREENBERG: Your Honor, please, I would like to enter the file.

THE COURT: Have it marked as an exhibit.

(The Selective Service file was marked Government's Exhibit No. 1 by the reporter.)

* * *

[Tr. 9]

Detroit, Michigan,
Wednesday, July 8, 1953.

* * *

JEAN GERTRUDE COCKERILL thereupon resumed the witness stand and, having previously duly sworn, testified further as follows:

* * *

DIRECT EXAMINATION (Continued)

* * *

[Tr. 10]

THE COURT: Can't we do this in this case? Can't it be stipulated that all of these proceedings leading to induction were regular, with whatever exceptions the defense has to make here, and then dwell on the matters that are important here?

* * *

[Tr. 11]

MR. LEITHAUSER: As I told your Honor yesterday, we have no desire to spring our defense as a surprise. In this

Discussion Between Court and Counsel

particular case we are willing to stipulate to the facts; that the defendant is within the territorial jurisdiction of this particular court; that they have physical jurisdiction over him; that they sent him a questionnaire and that he stated in there that he was a minister and he requested a "conscientious objector" form, and the Draft Board, in the

[Tr. 12]

course of its business sent him a "conscientious objector" form; that he returned it, and, in support of that form, that he included two affidavits, and thereafter the Draft Board classified him "3-A" and promptly sent him a notice of his classification.

THE COURT: "3-A" would be what?

MR. LEITHAUSER: Dependency classification, your Honor. They classified him 3-A and sent him a card in the regular course of business, as they were required to do.

He requested a personal appearance timely, within the time allowed him to do so.

THE COURT: Does the Court understand that he objected to the classification of 3-A?

MR. LEITHAUSER: That's correct, your Honor. He objected to that.

THE COURT: And you maintain he was entitled to a classification of what?

MR. LEITHAUSER: Conscientious objector and/or minister, 4-E and/or 4-D.

The file was then sent to the Appeal Board.

THE COURT: Did he then have a personal appearance?

MR. LEITHAUSER: Not at that time. He requested it but he wasn't granted it.

THE COURT: Did he ever have a personal appearance—

MR. LEITHAUSER: Yes, sir. At that time he did not,

[Tr. 13]

but later they found the error of their ways and they

Discussion Between Court and Counsel

granted him a personal appearance.

THE COURT: He was granted a personal appearance?

MR. LEITHAUSER: Yes.

THE COURT: Was he permitted to state his case before the Board?

MR. LEITHAUSER: No.

THE COURT: That's one of the issues in this case: although he was granted a personal appearance before the Board he was not permitted to state his issues?

MR. LEITHAUSER: That is correct, your Honor. That would be one of our defenses. A portion of the transcript of the personal appearance appears in the file.

Then he was sent his classification card and he was ordered to report for his physical examination, as was required, and he did so report. He filed an appeal and he was permitted to do so. And he had a hearing before a hearing officer. As I recall, it was the same hearing officer who testified in court yesterday on a previous case, Mr. John C. Ray.

Those are the procedural facts and we will—

THE COURT: Then, as far as this case is concerned, there are two matters which the defendant claims were wrong: The first one is the classification, he was placed in 3-A whereas he claims he should have been placed in 4 something, I think.

[Tr. 14]

MR. LEITHAUSER: 4-E and/or 4-D.

THE COURT: As a conscientious minister as his religion?

MR. LEITHAUSER: That is correct, your Honor.

THE COURT: And the second issue here is that while he had and did take the opportunity and did appear before the Board, made a personal appearance to state his case, that he was not permitted to state his case and the reason for his claimed conscientious objection as a minister. Those are the two issues?

Discussion Between Court and Counsel

MR. LEITHAUSER: Those are the two obvious issues I would say. There are other issues. If the Court wishes, I will enumerate them at this time. They have nothing to do with the procedure as appears from the file, though—one does, too. One was the same question that was raised before the Court yesterday relative to the report of the hearing officer, the absence of the report of the hearing officer in the file.

If your Honor recalls, it's a system where, as the Assistant Attorney General digests the hearing officer's report—

THE COURT: The absence of the hearing officer's statement in the file?

MR. LEITHAUSER: That is correct, your Honor.

THE COURT: Why don't we proceed, then, in

[Tr. 15]

accordance with that order inasmuch as the stipulation or admission of counsel of the other procedural steps is that they have been taken in accordance with the law, with the exception of these few stated now?

MR. GREENBERG: I just want to get it straight once more as to what steps he is contending have not been properly taken on.

THE COURT: I can't hear you.

MR. GREENBERG: I want to know what the contention of the defense counsel is again as to the three steps that are not met.

THE COURT: Well, here is how the Court understands them:

The first one is that he was wrongly classified in the 3-A Class instead of 4-E.

MR. LEITHAUSER: Or 4-D.

THE COURT: 4-E or 4-D.

MR. LEITHAUSER: That is on the Local Board level. We make our objection at the Local Board level.

Discussion Between Court and Counsel

MR. GREENBERG: Because of arbitrariness, is that right?

THE COURT: Well, it wouldn't make any—well, I don't know. I don't want to speak for defense counsel. He stated to the Court that he was wrongly classified under 3-A, under the evidence in the case, which was available to the

[Tr. 16]

Local Board, and evidence which he was ready to produce but was prevented by the Board from producing.

Do you accept that statement, Mr. Leithauser?

MR. LEITHAUSER: I will accept that statement; yes, your Honor.

THE COURT: All right, that's the second issue. And the third issue is that the hearing officer's statement was not placed in the file on appeal in accordance with the requirement of the law.

MR. GREENBERG: I will object to that, your Honor. Is your Honor assuming that that is a requirement of the law, that the hearing officer's report be placed in the—

THE COURT: I am assuming nothing, counsel. I asked defense counsel and he readily agreed to state his defenses now so we need not go through the whole file and prove that he was registered, to prove that he was this, that and the other, with the exception of the issues that are made now before the Court pursuant to the statement of defense counsel.

MR. LEITHAUSER: We have one or two other defenses we will interpose that are not relevant to the chronological order of the material in the file. We will object to the fact that the material that had been compiled by the FBI was never made available to the Appeal Board.

MR. SMITH: Of course, your Honor, that is the

[Tr. 17]

Nugent case. I would like to advise counsel that that has been settled by the Supreme Court. There isn't any question

Discussion Between Court and Counsel

about that.

MR. LEITHAUSER: We are not too convinced that that has been settled by the Supreme Court.

* * *

[Tr. 18]

MR. GREENBERG: Yes, your Honor. I just want a little clarification on this point one that was raised. As I understand it, the question of wrong is opposed to the question of being arbitrary. If the question is arbitrary, the Government is prepared to argue that question. The question of wrong—I don't believe the Government has to maintain a position of right or wrong.

THE COURT: Well, I think, of course, both counsel will agree that neither this court nor any other body outside the Selective Service proceedings may substitute its judgment for the judgment of the Board, so long as the registrant was present and received the right to present his case. That is what I assume the defense claims here, that the classification was an arbitrary one.

Is that what you claim?

[Tr. 19]

MR. LEITHAUSER: That's right, your Honor, without any basis in fact.

THE COURT: Yes, without any substance in fact.

MR. GREENBERG: Thank you, your Honor.

Q (By Mr. Greenberg) Witness, the registrant in this particular case was granted a personal hearing before the Board, is that correct?

A That's right.

Q Do you have a record of that personal hearing and a record of the demand for a personal hearing?

A Yes.

Q If you will read to the Court, first, the demand of the registrant for a personal hearing.

Jean Gertrude Cockerill, direct (Gov't)

* * *

[Tr. 20]

THE COURT: All right, you may state what that stamp is on the bottom of that.

A It is the date that we received his request for personal appearance.

THE COURT: What is that date?

A January 16, 1952.

THE COURT: Stamped with the Board's stamp?

A Yes.

Q (By Mr. Greenberg) January 16, 1952. I wonder if you would

[Tr. 21]

read to the Court—pardon me, strike that. Do you have a memorandum of the testimony taken at the time of the personal hearing before the Board?

A Yes, I do.

Q That is in the file?

A Yes.

* * *

[Tr. 33]

JOHN C. RAY was thereupon called as a witness on behalf of the Government and, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. GREENBERG:

* * *

Q You are a hearing officer for the Selective Service?

A I am.

[Tr. 34]

Q And you act on behalf of the Justice Department?

A That, I do.

Q You have handled the case for the Selective Service of Joe V. Gonzales, an appeal from Local Board No. 95,

John C. Ray, direct (Gov't)

Selective Service No. 209531424?

A I did.

Q I would like to show you this and ask you if this is your signed report filed with the Justice Department? (Handing a document to the witness.)

A Yes, it is. My signature appears on this.

Q This is a report of your hearing?

A Yes, sir.

MR. GREENBERG: Your Honor, I would like to offer this into evidence.

THE COURT: All right, have it marked.

(Report of the Hearing Officer was thereupon marked Government's Exhibit No. 2 for identification by the reporter.)

* * *

[Tr. 35]

THE COURT: Well, I think the Court will accept it in evidence and give it such consideration or lack of consideration as under the law and circumstances appearing in this case it ought to have or ought not to have. We are trying this case without a jury. And, after the case is completed, the Court will take it under consideration.

* * *

[Tr. 37]

Q (By Mr. Greenberg) Now, this is your hearing, conducted by you?

A Yes, it is.

Q With the registrant present?

A That is correct.

[Tr. 38]

This Exhibit No. 2 is a report which was prepared by myself in my office with respect to the hearing which I conducted in regard to registrant Joe V. Gonzales. The regis-

John C. Ray, direct (Gov't)

trant appeared at the scheduled hearing at the United States Attorney's Office on August 5, 1952—

* * *

A (Continuing) The registrant appeared at the scheduled hearing at the United States Attorney's Office on August 5, 1952,

[Tr. 39]

accompanied by his wife, Guadalupe Gonzales, and Howard A. Graffis and Clara Mahn, of 476 West Grand Boulevard, Detroit. The latter two individuals are Jehovah's Witnesses and belong to the same *unite* of the sect as the registrant.

Registrant was born July 22, 1931 in San Antonio, Texas, wherein he attended grade and high schools. He left the Edison High School of that city in June of 1948 after two years attendance. He then took employment with the Grum Roofing and Construction Company of San Antonio, and worked for that company until the summer of 1949 as a sheet metal worker. He married his present wife on September 28, 1948.

THE WITNESS: (Continuing) In the summer of 1949 the couple came north working as harvest hands, following the harvest operations up to Minnesota. They came to Detroit in the fall of 1949 where registrant obtained employment as a laborer at the Adams Lumber Company in September of 1949 and worked for that firm until July of 1950. Then he obtained

[Tr. 40]

employment on August 18, 1950 at the Great Lakes Steel Corporation as a laborer, where he is employed at the present time.

Registrant previously was a Catholic. He has five sisters and a younger brother residing in Texas and California, all of whom are Catholics. His parents were Catholics. His mother is dead but his father is living at 338 Melrose Place,

John C. Ray, direct (Gov't)

San Antonio, Texas. Registrant's wife became a Jehovah's Witness in 1941 and registrant became interested in the sect in the latter part of 1949 and was baptized therein in February, 1950. In October, 1950, he became a "Pioneer" in the sect, which means that he is "permitted" to devote 100 hours per month to religious activity. He participates in the usual activities of the sect, attending the several weekly meetings of his unit and including the "Theocratic Ministry School". He also does the usual Saturday and Sunday morning work of selling the sect's publications on street corners and making house-to-house calls.

Registrant claims that he should be classified as an ordained minister by virtue of his baptism in the Jehovah's Witness sect in February of 1950. He also alternatively claims that he is a conscientious objector by virtue of being a member of the sect. These claims are predicated upon the usual scriptural grounds advanced by Jehovah's Witnesses. Registrant would not accept any non-combatant service either in the field or in the hospitals. He abhors communists but would not defend the U. S. against invasion by them. He disclaims being a

[Tr. 41]

pacifist and if attacked would defend himself to the point of taking life.

SUMMARY OF THE CONTENTS OF THE FBI REPORT:

Registrant was born in San Antonio, Texas on July 22, 1931, and married his present wife on September 28, 1948. He attended school in San Antonio, Texas from 1938 to 1948, coming to Detroit in the fall of 1949. His mother is dead and his father is living at 338 Melrose Place at Santonio, Texas. Both parents were of the Catholic faith.

Neighborhood investigation discloses that registrant is well regarded in the several communities in which he has lived and that he and his wife are said to be very religious.

John C. Ray, direct (Gov't)

They are said to have held Bible studies and meetings in their apartments and appear to devote considerable time to religious work. Investigation at the Grand River and Henry Kingdom Hall Unit of the Jehovah's Witnesses, to which registrant belongs, discloses that he is a devoted member of the sect and applies himself earnestly to his religious work. Registrant serves as an advertising servant and supervisor of distribution of "Watchtower" and "Awake" magazines for his unit. The unit records showed that for the period from February 1950 to September 1950 registrant worked at least twenty hours each month doing public preaching, distributing literature, conducting Bible studies and making "back calls" for interested persons. After this, the registrant became a "Pioneer" in the

[Tr. 42]

Jehovah's Witnesses and all of his records are said to be maintained in the main office in Brooklyn, New York. As a "Pioneer" he is required to put in a minimum of 100 hours of religious work per month.

EDUCATION:

Registrant attended schools in San Antonio, Texas and left the Edison High School of that city in 1948 after two years attendance.

EMPLOYMENT:

From the summer of 1948 to the summer of 1949 he worked for the Grum Roofing and Construction company as a sheet metal worker. He then worked with his wife as a harvest worker following the harvest from Texas to Minnesota and came to Detroit in the fall of 1949 where he obtained employment with the Adams Lumber Company and worked as a laborer until June, 1950. In August, 1950 he obtained employment with the Great Lakes Steel Corporation as a laborer and is so employed at the present time. At the Adams Lumber Company he was remembered as a

John C. Ray, direct (Gov't)

good worker but did not appear to be overly religious. Records also show that he was employed by the McVeigh Platting Company of that city from June 1950 to July 1950. The work was of a temporary nature and the employers remembered little about registrant. At the Great Lakes Steel Corporation his record is good and contains no derogatory information. He is listed as a laborer and general maintenance man.

[Tr. 43]

CREDIT AND CRIMINAL RECORD:

None.

CONCLUSION :

Registrant appeared to be a sincere Jehovah's Witness and as such is conscientiously opposed to war. He refuses *combatent* or non-combatant service and claims classification as an ordained minister by virtue of his baptism in the Jehovah's Witnesses sect in February, 1950. As is customary with Jehovah's Witnesses, registrant claimed that his regular bread-earning work was merely an avocation and that his ministry was his true vocation. Besides his claim of being a minister, registrant also alternatively claimed to be a conscientious objector. He disclaimed being a pacifist and under certain circumstances, if attacked, would defend himself and members of his family to the point of taking life.

Although registrant is a "Pioneer" in his religious sect, and devotes at least 100 hours a month in religious activity, his affiliation with the sect has been too recent to warrant acceptance thereof as a deep-seated conviction. Until the fall of 1949 he was a Catholic and his conversion to the Jehovah's Witnesses is too closely related to his selective service status to be accepted yet as genuine.

RECOMMENDATION :

Claims of ministerial and conscientious objector classi-

John C. Ray, direct (Gov't)

fication not established. Class 1-A classification

[Tr. 44]
sustained.

Signed "John C. Ray."
"Dated: August 11, 1952."

Q (By Mr. Greenberg) Mr. Ray, do you see the registrant in the courtroom?

A Yes, I do, he is sitting behind counsel in the courtroom there.

Q On the occasion of this hearing, did you at any time prevent the registrant from submitting any evidence?

A None whatsoever. He brought over two friends of his and I gave him considerable amount of time to present his case.

Q You allowed him to say everything and show everything that he wanted?

A Yes, I did.

Q You sent this report where?

A I sent this report on August 11, 1952, in quadruplicate, to T. Oscar Smith, Special Assistant to the Attorney General, at Washington, D. C.

* * *

CROSS-EXAMINATION

BY MR. LEITHAUSER:

* * *

[Tr. 45]

Q Do you have any independent recollection of the hearing of this particular registrant?

A Yes, I have, of this particular registrant.

Q Will you tell the Court what independent recollection you have that does not appear in your report, a recollection perhaps of some conversations that occurred between you and the defendant or occurred between you and

John C. Ray, cross (Gov't)

witnesses whom the defendant had brought to corroborate his claim? Conversations which might be significant to the Court in a hearing of this type today.

A There was nothing of particular significance that was not reflected in my report.

As in all of these cases, I would test the religious knowledge of the registrant by asking him questions to test his convictions, and the like.

[Tr. 46]

Q Do you recall whether or not you applied this test to this particular defendant?

A Yes, I did.

Q Did you ask him biblical questions, as you stated?

A I asked him on what grounds he based his convictions and he gave me the usual ones which I have had from other Jehovah's Witnesses, and some of these answers would vary from case to case.

Q And was he able to satisfy you that he had biblical bases for his position?

A Well, he gave me citations, biblical citations.

Q Would you say that he had passed that test you applied? You spoke of it as being a test.

A Well, it is not in the form of a test.

Q I'm using your words instead of mine.

A It would be a test to the extent of satisfying myself to the extent of indicating that he had a knowledge of reading the Bible.

Q Well, did you conclude that he had applied himself?

A Yes. That test, however, would not be conclusive, of course.

Q I'm appreciative of that fact. If you will just answer the questions, Mr. Ray. I read from your conclusion which you have just read into the record:

"Registrant appeared to be a sincere Jehovah's

John C. Ray, cross (Gov't)

Witness and as such is conscientiously opposed to war."

[Tr. 47]

That is your statement?

A That is my statement. I dictated it.

Q Is there anyone that revises the dictation you give?

A No one.

Q There is no question that this is your particular statement?

A That is my language, my dictation.

A This is your conviction of the matter at this particular point?

A That's my language.

Q Yes. And I assume when you stated it you meant it to be true?

A Yes. Otherwise, I wouldn't—

Q Yes. I repeat it to you one more time:

"Registrant appeared to be a sincere Jehovah's Witness and as such is conscientiously opposed to war."

Yet a little later in the conclusion, Mr. Ray, you say "I don't feel this man should be classified as a conscientious objector." How do you reconcile those two statements?

A Well, will you read that first statement over again?

Q (Reading): "Registrant appeared to be a sincere Jehovah's Witness and as such is conscientiously opposed to war."

A Yes.

Q Yes, of course, I read it twice so we could impress it upon the Court and myself.

A I read it—"registrant appeared"—

Q What did you mean by the word "appeared"? Did you mean appeared to you?

A That is correct.

John C. Ray, cross (Gov't)

[Tr. 48]

Q Did you get the impression that he was a sincere Jehovah's Witness?

A He appeared, that's right.

Q Do you have a record of saying a word about which there was some question in your mind—you were under the impression he was a sincere Jehovah's Witness?

A That is correct.

Q Then how do you reconcile the statement later in the conclusion wherein you say "I don't think he should be classified 1-O"?

A Because his adoption of the Jehovah's Witness sect was too closely affiliated with his registration with the Selective Service. He was baptized in the Catholic faith, all of his family were Catholics, and he was such until 1948. Well, anyway, very, very close—may I see the file?

Q Well, the date doesn't seem to be too important. We'll take your word that it was close.

A It seemed to be contemporaneous with his registration.

Q I think the date is immaterial.

A It was material to me because I based my recommendation and conclusion upon the entire file.

Q I'll ask you this, Mr. Ray: Are you of the opinion that a person could not be a conscientious objector today because he was not yesterday? Do you understand my question, Mr. Ray?

A Yes, I understand your question very well. But I don't want to answer that as a general question. Let us be specific with the

[Tr. 49]

registrant, as I have had a number of these cases and a wealth of experience to draw upon and this particular case was an exceptional one.

John C. Ray, cross (Gov't)

[Tr. 51]

Q (By Mr. Leithauser) To be more specific, why did you feel in this particular case, Mr. Ray, that the proximity of the time when he became or claimed to become a Jehovah's Witness prevented him from being classified 1-O?

A Based upon his antecedents, his religious background, the proximity of his conversion or adoption of the Jehovah's Witness sect to his classification by the Selective Service and also the manner in which he claimed to be a Pioneer, which is a very unusual thing, as far as Jehovah's Witnesses are concerned. All of that added up to one thing to me. And I have had other cases where people would adopt a conscientious objector sect or a religious affiliation just in order to avoid induction or induction into military service.

Q Your only reason, according to your conclusions, for not classifying this person as a conscientious objector is the time

[Tr. 52]

element, is that correct?

A That was the element.

Q Sir?

A That was the principal element.

Q I mean from your conclusions?

A Yes.

* * *

[Tr. 54]

JEAN GERTRUDE COCKERILL thereupon resumed the witness stand and, having been previously duly sworn, testified further as follows:

DIRECT EXAMINATION (Continued)

BY MR. GREENBERG:

Q Miss Cockerill, after this file was returned to you by

Jean Gertrude Cockerill, direct (Gov't)

the Appeal Board, did it contain any recommendation from the Justice Department?

A It did.

Q You have a letter from the Justice Department!

A Yes, I do.

* * *

[Tr. 57]

THE COURT: I think the ruling of the Court should be, and it is, that the Court will overrule the objection and permit the letter to be received in evidence. And if the Court finds anything in there that is objectionable to the rules of evidence, the Court will take due notice of it and not consider it.

* * *

[Tr. 61]

MR. LEITHAUSER: Precisely our position, your Honor. We make no claim that he should be classified 3-A.

[Tr. 62]

THE COURT: Does that answer your question?

MR. GREENBERG: Fine.

One more question, your Honor: Has he accepted the fact that he refused to be inducted?

MR. LEITHAUSER: It is stipulated.

* * *

CROSS-EXAMINATION

BY MR. LEITHAUSER:

* * *

[Tr. 63]

Q Were you personally present at the time of that hearing before the Local Board?

A Yes, I was.

Q Were you present throughout the entire meeting?

Jean Gertrude Cockerill, cross (Gov't)

A I believe I was, except for maybe a few interruptions.

* * *

[Tr. 64]

Q I have extracted this paper from the file. Will you read the typewritten portion from that paper? First give me the date when it was filed with the Board?

A (Reading) : "April 3rd, 1951."

* * *

[Tr. 66]

(The two affidavits just read by the witness were thereupon marked for identification Defendant's Exhibit No. 3 by the reporter.)

* * *

[Tr. 67]

(A Special Form #150 for conscientious objectors was marked for identification Defendant's Exhibit No. 4, and a Watchtower card constituting Pioneer assignment was marked for identification Defendant's Exhibit No. 5 by the reporter.)

* * *

[Tr. 68]

MR. LEITHAUSER: We would like to clarify, for the purpose of the record, the stipulation of the defendant refusing to submit to induction. We would like to stipulate that he did report to the induction center on the date that he was ordered to do so; that he went through everything he was directed to do; and when he was ordered to take one step forward which would place him under military jurisdiction, it was at that point that he refused to submit.

THE COURT: Well, the Court so understands.

MR. LEITHAUSER: Yes. The Supreme Court has made distinction in these cases and we want to make certain that

Defendant's Motion for Judgment of Acquittal

[Tr. 69]

this case comes within that purview.

THE COURT: He appeared for induction but refused to submit to induction.

MR. LEITHAUSER: He refused to take the step forward.

THE COURT: All right.

The Government rests.

MR. LEITHAUSER: May it please the Court, at this time we would like to make a motion for judgment of acquittal in this case.

* * *

MR. LEITHAUSER: Our motion, may it please the Court, is predicated on eleven different grounds.

[Tr. 70]

Ground number one: There is no evidence to show that the defendant is guilty as charged in the indictment.

Ground number two: The Government has wholly failed to prove a violation of the Act and Regulations by the defendant, as charged in this particular indictment.

Number three: The undisputed evidence shows that the defendant is not guilty as charged.

Number four: The denial of the conscientious objector status by the Local Board and the Board of Appeals and the recommendation of the Hearing Officer of the Department of Justice and by the Attorney General in his recommendation to the Appeal Board were without basis in fact, were arbitrary, were capricious, were contrary to the law and the Selective Service Regulations.

Number five: The recommendation of the Department of Justice, relied upon by the Board of Appeals, is arbitrary, capricious and illegal because it refers to artificial, fictitious and unlawful standards not authorized by the Act and Regulations and advises the Appeal Board to classify according to irrelevant and immaterial lines in determining that the defendant was not a conscientious objector when a

Defendant's Motion for Judgment of Acquittal

pursuit of the Act and Regulations was the only thing for the Hearing Officer and the Appeal Board to follow.

Number six: The undisputed evidence at the trial and that part of the record received into evidence shows that

[Tr. 71]

there was a violation of procedural rights of the defendant before the Local Board on personal appearance, because at the time he appeared before the Board they had their minds made up not to reconsider his case and all of his claims *de novo*, and they merely heard and listened to him with the intention of giving him the same classification given to him before the personal appearance so that he could appeal; accordingly there was no *de novo* classification by the Appeal Board upon personal appearance as though he had never before been classified, which violated Section 1624.2 of the Regulations.

* * *

Number seven: The undisputed evidence shows that upon the trial the draft board members were prejudiced and discriminated against the defendant because of his membership in Jehovah's Witnesses, a religious organization, contrary to Section 1622.1, subparagraph (d) of the Regulations.

Number eight: The Local Board deprived the defendant, this defendant, of procedural right to a full and fair hearing before the Board of Appeals by failing to make an adequate and complete full written memorandum of the additional

[Tr. 72]

oral evidence given by the defendant upon the occasion of his personal appearance, which new and additional oral evidence does not otherwise appear in the written papers sent to the Board of Appeals.

Number nine: The undisputed evidence shows that the

Defendant's Motion for Judgment of Acquittal

draft board violated the regulations by denying the defendant his claim for classification as conscientious objector because he had pressed before the Selective Service System his claim for exemption as a minister of religion.

Number ten: The use of the secret and investigative report of the FBI without notifying or confronting the defendant with the substance of or the parts of it which were considered by or relied upon by the Hearing Officer upon the occasion of the hearing before the Department of Justice Hearing Officer and also the failure to include all of the evidence in the FBI report which was relied upon by the Hearing Officer, and all that appeared in the FBI report and that was considered by the Hearing Officer, and also their failure to put all of such evidence in the FBI report in the draft board files for the use of the draft Board of Appeals and the Court constitutes a deprivation of defendant's rights to procedural due process of law, in violation of the Fifth Amendment to the United States Constitution, and is also a clear and unequivocal violation of the Selective Service Act of 1948, otherwise known as the Universal Military Training and Service Act and

[Tr. 73]

the regulations promulgated thereunder, being Regulation No. 1622.1, sub-paragraph (b).

And number eleven: The use of the report of the Hearing Officer of the Department of Justice and reliance upon it by the Assistant to the Attorney General without notifying or confronting the defendant with the substance of the report, and also the failure to include the entire report of the Hearing Officer relied upon by the Assistant to the Attorney General in the draft board file for the use of the Appeal Board and the court constitutes a deprivation of the defendant's right to procedural due process of law, in violation of the Fifth Amendment to the United States Constitution, and is also a clear and unequivocal violation

Defendant's Motion for Judgment of Acquittal

of the Selective Service Act of 1948 and the regulations promulgated thereunder.

On those bases we will found our motion for a judgment of acquittal.

THE COURT: The Court will reserve decision on the motion.

JOE VALDEZ GONZALES was thereupon called as a witness in his own behalf and, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. LEITHAUSER:

* * *

[Tr. 74]

Q You heard this morning testimony by the Clerk of the Local Board 95 relative to the personal appearance that you had before the Board?

A Yes, I heard some of the testimony.

Q Did you hear the Clerk of the Board read the transcript of the testimony that was taken at that hearing?

A I did.

Q Do you recall that particular hearing?

A I do, yes.

* * *

Q Do you have anything to add to that transcript? In your mind, is that a complete transcript of the conversations between

[Tr. 75]

yourself and the members of the Board at that hearing?

A Well, I know that some parts of it, some of the answers that I gave this Chairman were not completely put down as I answered them. I know that to be a fact.

Q Do you recall any particular statement that was

Joe Valdez Gonzales, direct (Def't)

read into the record that was not your statement?

A No, I don't.

Q To what portion of the transcript do you make reference when you say it does not contain what you have said?

A Well, for instance, when I was asked the question why I work at the steel mill and if the steel mill didn't make any war implements that helped to destroy or kill people, I was asked if that didn't bother my conscience and I answered. The answer that I gave was that even if I worked on a farm or raised pigs and they were in turn sold to the market and the Government bought from the market, that it was beyond my control and it wasn't my affair. And the other part was put in, where I stated that I do the same when I pay my income tax, that it is beyond my control what the Government does with the money. And, as a matter of fact, it is not a business of mine.

Q Do you recall the conversation you had with the members of the Board specifically Mr. Gilmore and Mr. Sachs, relative to your rendering unto Caesar?

A Yes, I remember that.

Q The statement was made by Mr. Gilmore: "Who would be the

[Tr. 76]

Judge of what things belonged to Caesar?"

Your answer: "The Judge as to what things belong to Caesar is God's Word—the Bible, which tells"—

Then in this transcript appears a series of as risks.

Did you add anything to that or is that your statement?

A I believe I added something to that. And, if I'm not mistaken, I went to quote from the Bible and it was brought up that they knew about it.

Q They knew about what?

A The answer that I was going to give them from the Bible.

Q What answer did you attempt to give them?

Joe Valdez Gonzales, direct (Def't)

A Well, I attempted to give them from the Thirteenth Chapter of Roman's where it specifically brings out that Christ Jesus is the reigning King and that he is the one who is in authority and to him we must be in subjection. And it also mentions in the Thirteenth Chapter of Roman's that it is Him who bears the sword, and it is He who is a Judge for our good and a minister of God.

Q Those were the answers you intended to give to that?

A That's right.

Q Did you have a witness with you at that time?

A I had a witness with me.

Q And what was that witness' name?

A Paul C. Trescot.

[Tr. 77]

Q Did Mr. Paul Trescot testify before the Local Board?

A He wasn't given an opportunity.

Q Did you request the opportunity to have this witness appear before the Board?

A I did.

Q And what was the reply of the members of the Board?

A First they said "Well, as soon as we are through with this hearing we will hear your witness" and then after we were through with the hearing I requested it again and they said "We'll take your word for it since you seem to be pretty sincere".

Q They did not permit Mr. Paul Trescot to testify?

A No, they didn't.

Q I direct your attention to the testimony of Mr. Ray, the Justice Department Hearing Officer. Do you recall approximately the day on which you had that conversation with him?

* * *

A I don't very well recall the exact date but I do believe it was in the fall.

Joe Valdez Gonzales, direct (Def't)

Q Did you take any witnesses with you at that time?

A Yes, I took three.

Q What were the names of those three people?

[Tr. 78]

A Well, one of them was my wife, the other was Mrs. Clara Mahn and Howard A. Grafis.

Q Were those people present throughout the course of the entire hearing?

A They were.

Q At no time was any one of them excluded?

A No.

Q Were they permitted to testify?

A They were.

Q Were you permitted to testify?

A I was.

Q Were you permitted to tell Mr. Ray all that you wished to tell him?

A That, I was denied.

Q Why do you say you were denied that privilege?

A For instance, when I wanted to quote from the Bible on what I was basing my belief and my conversion from Catholic to one of the Jehovah's Witnesses Mr. Ray said that he had heard that many times before, that he had had some of these cases come before him and he knew the answers that we gave from the Bible. So the only chance that I had was when I was going to quote from the Book of James I remember that I was going to quote and he said that that was all right, that he just put down the Fourth Chapter of James because he knew what I was going to talk about.

[Tr. 79]

Q And he did not give you an opportunity to state your reasons personally?

A Not from a scriptural standpoint, as I would have

Joe Valdez Gonzales, cross (Def't)

liked, no.

* * *

CROSS-EXAMINATION

BY MR. GREENBERG:

Q Mr. Gonzales, I take it, in your discussions of what happened before the Local Board, that the transcript of what occurred, that was written by the Clerk, was false?

A Not in its entirety, no.

Q It was false in part?

A Yes, that's right.

Q Something was left out?

A Yes.

Q Did you ask for a copy of that transcript?

A I did.

Q Did you receive one?

A No, not until later.

Q It wasn't typed then, was it?

A No.

Q But you did receive one?

[Tr. 80]

A At a later date.

Q I will show you this and ask you if that is your signature?

A Yes, that is my signature.

Q Is that your handwriting all the way through?

A It is.

THE COURT: Will you have it marked first?

(A request for transcript of hearing in registrant's own handwriting was marked for identification Government's Exhibit No. 6 by the reporter.)

* * *

Joe Valdez Gonzales, cross (Def't)

[Tr. 81]

Q (By Mr. Greenberg) Did you read your copy?

A After I got it, which was about--it must have been a year and a half later when I got it, the 2nd day of February. I read the copy then.

Q And you found things missing?

A That's right.

Q Did you go back to the Board and tell them?

A No, I did not.

Q You said before that the part you thought was missing was where you wanted to introduce Mr. Trescot, is that right?

A No.

Q What part was missing?

A The part is missing there on the answer that I gave when they asked me if it wasn't against my conscience to be working at the steel mill when it produced war implements.

Q What did you say that was not put in the record?

A Well, I notice that the answer is not as I gave.

Q How did you give your answer?

A I gave the answer, I told them that even if I raised hogs and

[Tr. 82]

in turn the hogs were sold to market and the Government bought from the market, that it was beyond my control and actually none of my business who the market sold the hogs to and then I brought in about doing the same thing when the income tax—

Q I will read you the statement that is on the transcript. It says:

"I feel I have to make my living somehow even if I raised pigs, and I am still doing the same thing when I pay my income tax. I do not know where the money goes but that is not my business. 'Is rendering unto Caesar things that are Caesar's'."

Joe Valdez Gonzales, cross (Def't)

A That is where the part was left out.

Q Doesn't that say what you said you said?

A Before I bring in about the income tax, I bring in—

Q The income tax is in there, the pigs are in there, and where the money goes, and about it not being your business is in there.

A But before I bring in about the income tax I brought in that if these pigs are sold to market and in turn the Government bought from the market, that it was beyond my control.

Q Isn't the reason that you didn't complain is because your statement was pretty accurate here, isn't it?

A Well, the second part of it is, yes.

Q Did you work at Great Lakes Steel at the time?

A Yes, I did.

[Tr. 83]

Q Are you a pacifist?

A No.

MR. GREENBERG: I have no further questions.

REDIRECT EXAMINATION

BY MR. LEITHAUSER:

Q What do you mean, witness, when you say you are not a pacifist?

A What I mean when I say I am not a pacifist is that under certain circumstances, and those would be only biblical, I possibly would defend myself.

Q Those circumstances being what?

A Biblical circumstances. By that I mean that if it were only a command from God, like it was in the time of the Israelites. In the times of the Israelites many wars were fought but it was simply because the nation of Israel represented God's Kingdom on earth and today there is no nation

Finding of Guilty and Sentence

that represents God's Kingdom on earth or that is the political expression of His Kingdom here on the earth.

* * *

[Tr. 87]

Detroit, Michigan,
Tuesday, September 22, 1953.

* * *

MR. LEITHAUSER: I apologize for taking up the Court's time.

THE COURT: The Court was informed that you were before another Judge in this court.

In this case the Court has tried this matter some time ago and now files its findings. And, on the basis of the law and evidence pertaining to the facts, the Court finds the defendant guilty as charged.

A memorandum is being filed now and copies of this memorandum will be given by the Clerk to each counsel.

* * *

[Tr. 89]

Detroit, Michigan,
Monday, October 26, 1953.

* * *

[Tr. 90]

THE COURT: The sentence in your case is a fine of Five Hundred (\$500.00) Dollars; that you be placed—that you be committed to the custody of the Attorney General of the United States to be placed in an institution to be selected by him for a period of three (3) years.

* * *

GOVERNMENT'S EXHIBIT NO. 1

(Selective Service File of Defendant)

[Immaterial portions of all printed, mimeographed, etc. form documents in this exhibit are omitted in printing. Written material (by hand, typewriter, etc.) is distinguished from printed-form wording by *italics*.]

**SELECTIVE SERVICE SYSTEM
COVER SHEET**

Name (Last) *Gonzales* (First) *Joe* (Middle) *V.*

Address *3805 6th* (City or town) *Detroit* (County) (State)
Michigan

Telephone *Race White*

Selective Service Number *20 95 31 424*

Date of Birth (Month) *July* (Day) *22* (Year) *1931*

Michigan Local Board No. 95

Wayne County

1050 West Fort Street

Detroit, Michigan

(Stamp of Local Board)

Date of registration *January 4, 1950*

Date of mailing Questionnaire *February 28, 1951*

Changes of Address:

1. (Number and street or R. F. D. number) *476 W. Grand Blvd* (Date) *9-8-50* (City, town, or village) *Detroit* (Zone) (State) *Mich.*

2. (Number and street or R. F. D. number) *3783 32nd* (Date) *3-9-51* (City, town, or village) *Detroit* (Zone) *10* (State) *Mich.*

3. (Number and street or R. F. D. number) *8538 Hamilton Apt. #12* (Date) *1-3-52* (City, town, or village) *Detroit* (Zone) (State) *Mich.*

4. (Number and street or R. F. D. number) *476 W.*

Cover Sheet

Grand Blvd. (Date) **12-29-52** (City, town, or village) *Detroit*
 (Zone) **16** (State) *Mich.*

* * *

Classification

Date	Class	Date of Expiration
4-10-51	3-A	
<i>Appeal Bd</i> 6-12-51	3-A	
1-8-52	1-A (<i>acceptable</i>)	
2-19-52	1-A	
<i>Appeal Bd.</i> 12-11-52	1-A	

SSS Form 101

* * *

—

**SELECTIVE SERVICE SYSTEM
CLASSIFICATION QUESTIONNAIRE**

MAR 9 1951

[Local Board Stamp]

Selective Service No. **20 95 31 424**Date of mailing **FEB 28 1951**Date of birth: (Month) **July** (Day) **22** (Year) **1931**Name: (Last) **Gonzales** (First) **Joe** (Middle) **V.**Address: (Number and street or R. F. D. route) **476 W.***Grand Blvd.* (City, town, or village) **Detroit** (Zone)(County) **Wayne** (State) **Mich.****Michigan Local Board No. 95****Wayne County****1050 West Fort Street****Detroit, Michigan**

(Stamp of Local Board)

Government's Ex. No. 1—Selective Service File

Notice to Registrant

* * *

This questionnaire must be returned on or before
MAR 9 1951

John W. Gilmore
Member of Local Board

* * *

SSS Form No. 100

[Page 2]

* * *

Statements of the Registrant

Series I.—Identification

* * *

1. My name is (print) (Last) *Gonzales* (First) *Joe* (Middle) *V.*

* * *

3. My address now is (Number and street or R. F. D. route) *3783 32nd* (City, town, or village) *Detroit* (Zone) *10* (County) *Wayne* (State) *Mich*

4. My telephone number now is (Town) *Ta.* (Number) *50309* . . .

5. My Social Security number is (If none, write "None") *455-42-2114*

Series II.—Present Members of Armed Forces

* * *

[Page 3]

* * *

Series III.—Prior Military Service

* * *

Series IV.—Officials Deferred by Law

* * *

Classification Questionnaire

Series V.—Sole Surviving Son

* * *

Series VI.—Minister, or Student Preparing for the Ministry

* * *

1. (a) I (am, am not) *am* a minister of religion. (b) I do, do not) *do* regularly serve as a minister. (c) I have been a minister of the (Name of sect or denomination) *Jehovah Witness* since (Month) *Feb.* (Day) *19* (Year) *1950* (d) I (have, have not) *have* been formally ordained. (e) If so, my ordination was performed on (Month) *Feb.* (Day) *19* (Year) *1950* by (Ecclesiastical official performing the ordination) *L. E. Reusch* at (City and State) *Detroit Mich*

* * *

[Page 4]

Series VII.—Family Status and Dependents

1. (a) I am married (b) I (do, do not) *do* live with my wife; . . . (c) We were married at (Place) *San Antonio Texas* on (Date) *Sept. 27, 1948*

* * *

Series VIII.—Present Occupation

1. Every registrant must check each of the following boxes appropriate to his case and follow the instructions indicated. . . .

(b) I am now working in a nonagricultural occupation.

* * *

2. The job I am now working at is . . . *Crater bander and car checker*

3. I do the following kind of work in my present job . . . *Crater bander and car checker*

4. In my present job, I am . . . (a) A regular or permanent employee working for . . . other compensation

I have worked 4 years in my present trade and I (do, do

Government's Ex. No. 1—Selective Service File

not) *do not* expect to continue indefinitely in it.

* * *

5. My employer is *Great Lakes Steel Corp.—Michigan Steel Div. . . . Ecorse Detroit Michigan. . . .* whose business is *Steel products . . .*

6. (a) I was employed by present employer on (Date) *8-18-50*

(b) I entered job described in Statements 2 and 3, this series, on (Date) *8-19-50*

[Page 5]

- (c) I am paid at the rate of \$1.50 per hour X . . .
- (d) I work an average of 40 hours per week.

* * *

Series IX.—Agricultural Occupation

* * *

[Page 6]

Series X.—Education

1. I have completed (Number) 8 years of elementary school, . . . and (Number) 2 years of high school.

2. I (was, was not) *was not* graduated from high school.

3. I have had the following schooling other than elementary and high school (if none, write "None"):

Name of College, University, Course Preparatory, Trade or Busi- ness School	Length of Time At- tended, Degrees or Certificates Granted
<i>Private instruction by Prof. H. Graffis</i>	<i>Bible</i>

<i>Private instruction by Prof. H. Graffis</i>	<i>Bible</i>	<i>11-1949</i>
		<i>Oct 1. 1950</i>

Series XI.—Students

* * *

Series XII.—Citizenship

* * *

Classification Questionnaire

Series XIII.—Court Record

* * *

[Page 7]

Series XIV.—Conscientious Objection to War

* * *

By reason of religious training and belief I am conscientiously opposed to participation in war in any form and for this reason hereby request that the local board furnish me a Special Form for Conscientious Objector (SSS Form No. 150) which I am to complete and return to the local board for its consideration.

Joe V. Gonzales
(Signature)

Series XV.—Physical Condition

* * *

Registrant's Statement Regarding Classification

* * *

The registrant may write in the space below or attach to this page any statement which he believes should be brought to the attention of the local board in determining his classification. *Regular or ordained minister.*

Registrant's Certificate

* * *

I, *Joe V. Gonzales*, certify that I am the registrant named and described in the foregoing statements in this questionnaire; that I have read (or have had read to me) the statements made by and about me, and that each and every such statement is true and complete to the best of my knowledge, information, and belief. The statements made by

Government's Ex. No. 1—Selective Service File

me in the foregoing (are, are not) *are* in my own hand-writing.

(Signature or mark of registrant)
Joe V. Gonzales

* * *

[Page 8]

* * *

Dates	Minutes of Actions by Local Board and Appeal Board	Vote	Yes	No
3-27-51	<i>SSS Form 150 mailed</i>			
4/10/51	<i>Class III A</i> <i>JG</i>		4	0
APR 25 1951	<i>Form SSS 110 mailed</i>			
5/16/51	<i>Forwarded to Appeal Board</i>			
6/12/51	<i>Classified III-A by Appeal Board</i>			
	<i>Panel II F</i>		3	0
6/15/51	<i>Form SSS 110 Mailed to Registrant</i>			
JAN 8 1952	<i>1A . . .</i>		3	0
JAN 11 1952	<i>Form SSS 110 Mailed</i>			
1/23/52	<i>Hearing set for January 29, 1952</i>			
1/29/52	<i>Hearing adjourned by Board, Lack of quorum. JG</i>			
1/29/52	<i>Hearing set for February 4, 1952</i>			
2/5/52	<i>Hearing adjourned by Board. Lack of quorum. JG</i>			
2/5/52	<i>Hearing set for February 12, 1952</i>			
2/12/52	<i>No decision made on classification.</i> <i>Transcript of hearing in Cover Sheet</i>			
2/19/52	<i>Class 1A contd</i> <i>JG</i>		3	0
2/19/52	<i>Form SSS 110 Mailed</i>			
2/19/52	<i>Form SSS 223 Mailed Feb. 28, 1952</i>			
2/25/52	<i>Received appeal from registrant</i>			

Classification Questionnaire

<i>4/8/52</i>	<i>Received papers back from Fort Wayne</i>	
<i>4/8/52</i>	<i>Form DD 62 Mailed Acceptable</i>	
<i>4/8/52</i>	<i>Forwarded to Appeal Board</i>	
<i>6/2/52</i>	<i>Forwarded to Department of Justice for advisory recommendation</i>	
<i>12/4/52</i>	<i>Returned from the Department of Justice</i>	
<i>12/11/52</i>	<i>Classified I-A by Appeal Board, Panel II F</i>	<i>3 0</i>
<i>12/15/52</i>	<i>Form SSS 110 Mailed</i>	
<i>FEB 3 1953</i>	<i>Form SSS 252 Mailed FEB 19 1953</i>	

[Page 9]

* * *

<i>2/19/53</i>	<i>Refused to submit to induction</i>
<i>4/15/53</i>	<i>Reported to U. S. Attorney as delinquent</i>
<i>5/8/53</i>	<i>U. S. Attorney requested indictment by Grand Jury.</i>

DEFENDANT'S EXHIBIT NO. 5

W A T C H T O W E R
B I B L E A N D T R A C T S O C I E T Y
I n c o r p o r a t e d

Publishing 117 Adams Street Brooklyn 1, N. Y.

Date OCT 1 1950 SC

This card constitutes your pioneer assignment to witness in territory of the Downtown Unit, Detroit, Mich. Company, obtaining territory locally from the servant.

Defendant's Ex. No. 5—Pioneer Assignment Card

This includes business districts. Please show this card to the company servant as his notification of your assignment. Return it to this office when you are through working there.

Servant:

Your fellow witnesses,
Watchtower Bible and Tract Society, Inc.

This assignment cancels all previous assignments.

Will supply further evidence, when sent form (SSS Form #150)

Truly yours
Joe V. Gonzales

MAR 9 1951

[Local Board Stamp]

DEFENDANT'S EXHIBIT NO. 4

III A JG 4/10/51

**SELECTIVE SERVICE SYSTEM
SPECIAL FORM FOR CONSCIENTIOUS OBJECTOR**

Selective Service No. *20 95 31 424*

Name (Last) *Gonzales* (First) *Joe* (Middle) *V*

Address (Number and street or R. F. D. route) *3783 - 32nd*

St. (City, town, or village) Detroit 10 (County)

(State) Mich

[Local Board Stamp]

This form must be returned on or before (Five days after date of mailing or issue) *April 2, 1951*

*Defendant's Ex. No. 4—Conscientious Objector Form** * *
Series I.—Claim for Exemption
* * *

(B) I am, by reason of my religious training and belief, conscientiously opposed to participation in war in any form and I am further conscientiously opposed to participation in noncombatant training or service in the armed forces. I, therefore, claim exemption from combatant training and service and, if my claim is sustained, I understand that I will, because of my conscientious objection to non-combatant service in the armed forces, be deferred as provided in Section 6 (j) of the Selective Service Act of 1948.

Joe V. Gonzales
(Signature of registrant)

APR 3 1951
[Local Board Stamp]

Series II.—Religious Training and Beliefs

* * *

1. Do you believe in a Supreme Being? Yes
2. Describe the nature of your belief which is the basis of your claim made in Series I above, and state whether or not your belief in a supreme being involves duties which to you are superior to those arising from any human relation.

The basis for my belief is found in the ten commandments of God found in the Bible - Love of God and Love of neighbor - Anything that would cause me to violate these I couldn't do.

[Page 2]

3. Explain how, when, and from whom or from what source you received the training and acquired the belief which is the basis of your claim made in Series I above.

Through a home bible study conducted by one of Jehovah's

Defendant's Ex. No. 4—Conscientious Objector Form

Witnesses by the use of Watchtower bible aids.

4. Give the name and present address of the individual upon whom you rely most for religious guidance.

Howard A. Graffis 5465 - 15th St Det. Mich

5. Under what circumstances, if any, do you believe in the use of force?

In protection of person and ministerial activities, but at no time in aggression.

6. Describe the actions and behavior in your life which in your opinion most conspicuously demonstrate the consistency and depth of your religious convictions.

In Dec. 1949 started out actively in the service of God, after some home Bible studies and on Oct 1 of 1950 was recognized as a pioneer. I here inclose my pioneer assignment card.

7. Have you ever given public expression, written or oral, to the views herein expressed as the basis for your claim made in Series I above? If so, specify when and where.

None other than that stated above

Series III.—General Background

* * *

1. Give the name and address of each school and college which you have attended, together with the dates of your attendance; and state in each instance the type of school (church, military, commercial, etc.).

Name of School	Type of School	Location of School	Dates Attended From—To
Hidalgo	elementary	San Antonio, Texas	1938 1942
Will Rogers	intermediate	San Antonio, Texas	1942 1946
Edison High	High School	San Antonio, Texas	1946 1948
Divinity	Ministry School	Detroit, Mich.	1949 1951

Defendant's Ex. No. 4—Conscientious Objector Form

2. Give a chronological list of all occupations, positions, jobs, or types of work, other than as a student in school or college, in which you have at any time been engaged, whether for monetary compensation or not, giving the facts indicated below with regard to each position or job held, or type of work in which engaged.

Type of Work	Name of employer	Address of employer	Period Worked
<i>founta'n boy</i>	<i>Almas Drugs</i>	<i>San Antonio, Texas</i>	<i>1945 1948</i>
<i>Labor</i>	<i>Kelly construction</i>	<i>San Antonio, Texas</i>	<i>1948 1948</i>
<i>Sheet Metal Worker</i>	<i>Green Roof-Const. Co.</i>	<i>San Antonio, Texas</i>	<i>1948 1948</i>
<i>Laborer</i>	<i>Adams Lumber Co.</i>	<i>Detroit, Mich.</i>	<i>1949 1950</i>
<i>Shiping and Crating Dept.</i>	<i>Great Lakes Steel</i>	<i>Ecorse Mich.</i>	<i>1950 1951</i>

[Page 3]

3. Give all addresses and dates of residence where you have formerly lived.

Name of City, Town, or Village	State or Foreign Country	Street Address or R. F. D. Route	Dates of Residence
<i>San Antonio</i>	<i>Texas</i>	<i>338 Melrose Pl.</i>	<i>From- To- 1931 1948</i>
<i>San Antonio</i>	<i>Texas</i>	<i>202 Adams St.</i>	<i>1948 1949</i>
<i>Detroit</i>	<i>Mich.</i>	<i>3805 6th</i>	<i>1949 1950</i>
<i>Detroit</i>	<i>Mich</i>	<i>476 W. Grand Blv.</i>	<i>1950 1950</i>
<i>Detroit</i>	<i>Mich</i>	<i>3783 32nd</i>	<i>1950 1951</i>

4. Give the name and address of your parents and indicate whether they are living or not.

Father living Mother dead 338 Melrose Pl. San Antonio Texas

5. (a) State the religious denomination or sect of your

Defendant's Ex. No. 4—Conscientious Objector Form

Father Catholic

(b) State the religious denomination or sect of your mother *Catholic*

Series IV.—Participation in Organizations

* * *

1. Have you ever been a member of any military organization or establishment? If so, state the name and address of same and give reasons why you became a member.

No

2. Are you a member of a religious sect or organization? (Yes or no) Yes. If your answer to question 2 is "yes," answer questions (a) through (e).

(a) State the name of the sect, and the name and location of its governing body or head if known to you. *Jehovah's Witnesses—governing body 117 Adams Street Brooklyn, New York*

(b) When, where, and how did you become a member of said sect or organization? *In Dec. 1949, in Detroit Mich, by actively serving*

(c) State the name and location of the church, congregation, or meeting where you customarily attend.

Downtown Unit, 51 Sproat St. Detroit, Mich.

(d) Give the name, title, and present address of the pastor or leader of such church, congregation, or meeting where you customarily attend.

Presiding Minister P. C. Truscott 4846 Chatsworth Detroit 24 Michigan

(e) Describe carefully the creed or official statements of said religious sect or organization in relation to participation in war.

I am basing myself entirely on my knowledge of the Bible.

3. Describe your relationships with and activities in all

Defendant's Ex. No. 4—Conscientious Objector Form

organizations with which you are or have been affiliated, other than military, political, or labor organizations.

None

[Page 4]

Series V.—References

Give here the names and other information indicated concerning persons who could supply information as to the sincerity of your professed convictions against participation in war.

Name	Full Address	Occupation	Relationship to you
<i>Emma del Valle</i>	<i>3783 - 32nd St.</i>	<i>housewife</i>	<i>none</i>
<i>Howard A. Graffis</i>	<i>5465 15th St.</i>		
<i>P. C. Truscott</i>	<i>4846 Chatsworth</i>		

Registrant's Certificate

* * *

I, *Joe V. Gonzales*, certify that I am the registrant named and described in the foregoing statements in this questionnaire; that I have read (or have had read to me) the statements made by and about me, and that each and every such statement is true and complete to the best of my knowledge, information, and belief. The statements made by me in the foregoing (are, are not) *are* in my own handwriting.

Joe V. Gonzales
(Signature or mark of registrant)

* * *

DEFENDANT'S EXHIBIT NO. 3
[Following two affidavits]

To Whom It May Concern:

We, the undersigned members of Jehovah's Witnesses, hereby certify that we recognize Joe V. Gonzales to be a minister of the Gospel, that we have observed him regularly attending meetings for advanced study of the Bible and Bible prophecies and have also observed him regularly attending and taking part in the divinity school of Jehovah's Witnesses as well as performing other duties required of ministers of the Gospel. All of his said activities having been observed by us regularly during the past one and one-half years.

SIGNED:

Rhoda Hamilton	John J. Flory
Marshall Gamble	Annabelle Johnson
Dolores L. Inks	Bessie Govalenti
Pauline Zea	Doveiner Dortmann
Paul W. Hoffman	Jesse Montecinor
Howard A. Graffis	Elmond B. Taylor Jr.
Elmond B. Taylor Sr.	Harvey E. Zekiel
Bert M. Johnson	Irene H. Taylor
Miles Ojakorich	Forrest G. Inks
Roy C. Gamble	Stanley Barszozowski
James G. Zea	Archibald C. Milore

APR 8 1951

[Local Board Stamp]

Subscribed and sworn to before me this 1st day of April, 1951

P. C. Truscott Notary Public
My commission expires August 24, 1954

49a

Defendant's Ex. No. 3—Affidavit

To Whom It May Concern:

We, the undersigned, certify that Joe V. Gonzales is conducting weekly Bible studies with us.

We recognize him to be a minister of the gospel and we receive spiritual benefit by his weekly visits.

J. Thompson
L. B. Johnson
B. O. Brown
Caldonia Stephen

APR 8 1951
[Local Board Stamp]

Local Board., #95

MAY 7 - 1951
[Local Board Stamp]

I'm requesting to appear in person before the board for a reconsideration of my classification as a 3A. It was *unsatisfactory* to me and dont think I was classified according to the information that I submitted.

Yours truly

Joe V. Gonzales

MAY 15 1951

Proceed with appeal
JG [Notation in margin]

50a

Government's Ex. No. 1—Selective Service File

**SELECTIVE SERVICE SYSTEM
INDIVIDUAL APPEAL RECORD**

May 16 1951

[Local Board Stamp]

Name of registrant (Last) *Gonzales* (First) *Joe* (Middle) *V.*

Selective Service Number *20 95 31 424*

Classified by local board in Class *3-A* . . .

Date classified *April 10, 1951*

Forwarded on appeal taken by *Registrant*
Date forwarded to Appeal Board *May 16, 1951*

Jean G. Seppi

Member or Clerk of Local Board

Minutes of Action by Appeal Board

Appeal Board Panel II for the State of Michigan

(Street and Number) *435 Tussing Building* (City) *Lansing*

Classified in Class *III-A* until . . . by the following vote:

Yes 3 No 0 (Date of classification by Appeal Board)
June 12, 1951

Margaret Lois Finn

Clerk of Appeal Board.

* * *

SSS Form 120

May 17 1951

Dear Friend:

This note is to ask for a personal appearance before the board, for further consideration of my classification, and further information, if needed. I remain

Yours truly

Joe V. Gonzales

JAN 16 1952

[Local Board Stamp]

51a

Notice Granting Personal Appearance

January 23, 1952

**Joe V. Gonzales
8538 Hamilton Apt. 12
Detroit, Michigan**

20-95-31-424

Dear Sir:

Your appearance before the Board has been granted for Tuesday, January 29, 1952 at 3:30 P.M.

By Direction of the Board
Jean G. Seppi, Clerk

JGS

1/29/52

Gonzales
appeared before board Hearing adjourned by Board. Lack of quorum.

J Gilmore
Chairman
P. O. Newton
Bd Member

adj. 1 week. 2/5/52

adj. to 2/12/52 JG

Gonzales 2/12/52
Claims he is a minister or C. O.
Ordained in Feb. 1950.
Pioneer in Oct. 1950.
Employed at Gt. Lakes Steel - 8/18/50 to date
Not a paid minister
No certificate of ordination
All activities are voluntary
Advertising Servant for Downtown Area - Distributing magazines
Meet various days for bible study
Meet at various homes of members

Government's Ex. No. 1—Selective Service File

No church as such.

Does missionary work.

Theocratic Ministry School

Not a school of theology

Theocratic Aid to Kingdom Publishers a book outlining procedure.

No declaration in book or teaching directly outlawing war.

It is a matter of personal interpretation.

2/19/52 IA JG JCS IA PON

Reason for working -

Manufacturing materials for war

Would not aid injured if hurt in aggressive way or in battle.

"Render unto Ceasar" etc.

2/19/52

IA JG

20-95-31-424

MICHIGAN LOCAL BOARD No. 95

WAYNE COUNTY

1050 West Fort Street

Detroit, Michigan

REPORT OF A HEARING OF JOE V. GONZALES BEFORE
THE BOARD MEMBERS OF LOCAL BOARD
NUMBER 95 ON FEBRUARY 12, 1952
4:00 PM

Board members present: John W. Gilmore, Chairman;
Patrick S. Nertney, Secretary;
and Joseph C. Sachs, member

Mr. Gilmore: Before you testify you have to take the oath.

Registrant: You mean the oath to tell the truth?

Report of Personal Appearance

Mr. Gilmore: Yes.

Registrant was sworn in by the chairman, Mr. Gilmore
Mr. Gilmore: What is your situation?

Registrant: My situation is that I want to be classified
as a conscientious objector or minister but I want to get
my minister's classification as I feel that I am a minister
and I have been recognized as a minister.

Mr. Gilmore: What faith?

Registrant: Jehovah's Witness

Mr. Gilmore: Were you ordained?

Registrant: Yes, I was.

Mr. Gilmore: When was it?

Registrant: I was ordained in 1950.

Mr. Gilmore: When in 1950?

Registrant: I think it was in February.

Mr. Sachs: Ordained as a minister?

Registrant: Yes.

Mr. Gilmore: In your Form 150, in answer to question
No. 6, you said, "On October 1, 1950 I was recognized as a
pioneer and I enclose my pioneer assignment card." What
is a pioneer?

Registrant: A pioneer is a person who attends full
time. I give a hundred hours per month or about twelve
hundred hours a year to ministerial activities.

Mr. Gilmore: Where are you employed now?

Registrant: I am employed at the Great Lakes Steel
Corporation.

Mr. Gilmore: How much time do you put in there?

Registrant: I put in approximately forty hours a
week.

Mr. Gilmore: The usual working week?

Registrant: Yes, but it doesn't interfere with my min-
isterial duties.

Mr. Gilmore: How long have you been working at
Great Lakes Steel?

Government's Ex. No. 1—Selective Service File

Registrant: I would say about eighteen months. Since July 18, 1950 or possibly it was August 18, 1950.

Mr. Gilmore: In other words, you were working at Great Lakes Steel before you received your assignment. Why have you continued in this work?

Registrant: Because I found it did not interfere with my pioneering duties and it is not my wish to be a burden to anyone else.

Mr. Sachs: Are you paid by Jehovah's Witnesses?

Registrant: No, we are not paid ministers; we do it voluntarily. I have a witness out there who can verify all these statements. I will be glad to bring him in.

Mr. Gilmore: When we finish our questioning of you, we will have him in.

Mr. Gilmore: On what do you base your conscientious objection?

Registrant: On the teachings of the Bible that we should not kill and should love our neighbors as ourselves.

Mr. Gilmore: In Series IV, Section 2, Question E - the question is, "Describe carefully the creed or official statements of said religious sect or organization in relation to participation in war," and your answer here is, "I am basing myself entirely on my knowledge of the Bible." Is that correct?

Registrant: It is correct.

Mr. Gilmore: In other words, are we to understand that your claim as a conscientious objector is based entirely on your personal interpretation of the reading of the Bible?

Registrant: Yes.

Mr. Gilmore: You have submitted here a card referred to as "Pioneer Assignment." Is that what you claim to be the evidence of your ministers duties?

Registrant: Yes.

Mr. Gilmore: Do you have any other proof with you?

Report of Personal Appearance

Registrant: No, I have no other.

Mr. Gilmore: Do you have any definite ordination certificate?

Registrant: No, other than the ordination I previously described.

Mr. Gilmore: That is not the question. Do you have a definite certificate of ordination by a bishop or any other duly recognized church group?

Registrant: No, we do not have those. The hours we work; the missionary work we do and the knowledge we have of the Bible are all shown on a monthly report we turn in.

Mr. Sachs: This is all voluntary on your part?

Registrant: Yes.

Mr. Gilmore: Do you have any prescribed duties?

Registrant: I have some at present. I am the advertising servant of the downtown unit and I take care of all the advertising duties.

Mr. Sachs: All voluntary?

Registrant: Yes, we have two thousand magazines that I take care of each month. I see that they are distributed and if any more are needed.

Mr. Gilmore: Do you have any regular parish group, like an ordinary church?

Registrant: Yes.

Mr. Gilmore: Do you personally have any recognized parish in which you serve as a minister?

Registrant: I have my territory that I work.

Mr. Sachs: Do you have a congregation?

Registrant: Yes, we meet every Thursday and sometimes talks are handed to me that I should make and other times I conduct Bible studies with different people.

Mr. Gilmore: Does that study period always occur in the same place?

Registrant: They occur in homes. One of the sister's has given her home for the study and we also use the hall

Government's Ex. No. 1—Selective Service File

in the ministry school.

Mr. Sachs: You meet at the various homes of the members?

Registrant: Yes.

Mr. Gilmore: You do not have any church?

Registrant: No particular place of my own but I work with the downtown unit of Jehovah's Witnesses.

Mr. Gilmore: That work is necessarily performed after you do your regular employment at the Great Lakes Steel?

Registrant: Sometimes and sometimes not, when I am working midnights. I have sent a letter to the Great Lakes Steel that I would like to remain on the midnight shift for I must put my minister's duties first, and if it could not be done I would have to get another job but they worked it out for me.

Mr. Gilmore: Have you attended as a regular student in a recognized school of theology where you would receive ordination as a minister?

Registrant: Our minister's school is where we study.

Mr. Gilmore: Which one do you have?

Registrant: The Theocratic Ministry School.

Mr. Gilmore: Where is that?

Registrant: That is conducted at the hall at Grand River and Third.

Mr. Sachs: Is it a recognized school of theology?

Registrant: It is not. Well yes, it is if you want to call it that. I have a book here to show you how to study and understand the Bible and how to carry on the work.

Mr. Gilmore: What is the name of this book?

Registrant: "Theocratic Aid to Kingdom Publishers." I would like to refer to the contents of the book.

Mr. Sachs: When I said a recognized school, I meant if they are recognized.

Mr. Gilmore: Is it recognized by the state as a divinity school?

Report of Personal Appearance

Registrant: Yes, it is.

Mr. Gilmore: What state?

Registrant: The Society is recognized in New York.

Mr. Sachs: Then it would be recognized in New York but not in Michigan.

Registrant: No, it is not recognized in Michigan but we have schools all over the country.

Mr. Sachs: Is there any statement in your regular creed of Jehovah's Witnesses that relates directly to war?

Registrant: No, they have nothing relating directly to war. It is up to each one to go according to their own conscience.

Mr. Sachs: Individual consciences and not a set policy by the school?

Registrant: There are some Jehovah's Witness who have joined the army and navy and that is by their own conscience.

Mr. Sachs: This conforms with you original statement that it is your personal interpretation of the Bible.

Registrant: Yes.

Mr. Gilmore: Do you have anything further you wish to tell us?

Registrant: Just to tell you what you what a pioneer was and that I am the advertising servant of the downtown unit.

Mr. Gilmore: You have described to us that you do ministerial work.

Registrant: Just with the people in the homes and the reason that I work at the Great Lakes Steel and do work outside my ministerial duties is because; following the example as set forth by the Apostles, we are to work to support ourselves so that we will not be a burden to other people. This, I believe, is Acts 20, verse 34.

Mr. Gilmore: Doesn't the Great Lakes Steel manufacture articles that are used in war?

Government's Ex. No. 1--Selective Service File

Registrant: They do manufacture some articles that are used in war.

Mr. Gilmore: How does this affect you?

Registrant: It does not have any bearing in my belief anymore than my paying an income tax.

Mr. Gilmore: Would your conscience permit you to give assistance to an injured person?

Registrant: If they were not injured in aggression or if they were not in support of a political party, I would do so.

Mr. Gilmore: Are we to understand from that, that you would not assist persons injured in battle?

Registrant: No, I would not.

Mr. Gilmore: How is it you would help create articles of war that kill people?

Registrant: I feel I have to make my living somehow even if I raised pigs, and I am still doing the same thing when I pay my income tax. I do not know where the money goes but that is not my business. "Is rendering unto Caesar things that are Caesars."

Mr. Sachs: Since you are willing to give unto Caesar things belonging to Caesar, would you assist him in securing that which rightfully and honestly belongs to him even if it would be necessary to fight to secure that which rightfully and honestly belonged to Caesar?

Registrant: I would not give my life for Caesar because it does not honestly and truthfully belong to him. It belongs to God who gave it. Caesar's things which belong to him are those things such as - obeying his words so far as they are not in objection or against God's command.

Mr. Gilmore: Who would be the Judge of what things belonged to Caesar?

Registrant: The Judge as to what things belong to Caesar is God's Word - the Bible, which tells * * * *

Mr. Gilmore: Would you be the Judge of it?

Report of Personal Appearance

Registrant: Yes, by using the Word of God.

Mr. Gilmore: By your interpretation of the Word of God you would be the sole Judge of what belongs to Caesar, and what would be rendered unto Caesar?

Registrant: That is right.

Mr. Gilmore: Have you anything further to tell us?

Registrant: Not about that question.

Mr. Sachs: Anything in support of your statement, we want you to feel free to give us.

Registrant: While the statement is for not supporting Caesar because God's Word says not to kill, it states that friendship of the world, which is commerce and polities which makes up the world, is enmity with God.

Mr. Gilmore: Now, you mentioned a witness. What is the object of that?

Registrant: It is a Mr. Paul Truscott. The last time I was here I overlooked mentioning that Mr. Truscott is the servant who is supposed to sign my card. I showed it to him and he OK'd it and took it to sign.

Mr. Sachs: We believe you.

Registrant: I would like him to verify that I am a pioneer and that he signed by pioneer assignment.

Mr. Gilmore: Since you made these statements under oath, we do not doubt it.

Registrant presented copy of assignment of October 1, 1950 signed by "Servant: P. C. Truscott"

Mr. Sachs: Are you satisfied that everything is in the record that you want to be.

Registrant: I believe it is and I am satisfied.

Mr. Gilmore: Very well, we will advise you of the results of our deliberation.

Registrant: May I have a copy of the notes?

Mr. Gilmore: No, these are for our files.

Registrant: I would like to keep a copy of the testimony for reference so if you asked a certain question I

Government's Ex. No. 1—Selective Service File

would know what I answered.

Mr. Gilmore: We are not attempting in any way to cross-examine or to make it difficult for you to present anything you want. We will consider anything you present. You have made your statements here in the presence of the stenographer, the Board clerk, and three members of the Board. You know what you said and we know what you said and we will have a transcript of it. No one is going to try to distort it in any way, and we will consider it and make the decision.

Registrant: Very well.

Meeting closed at 4:50 PM.

TRANSCRIBED BY:

Marie A. Wischaw

APPROVED

John W. Gilmore

Chairman

SELECTIVE SERVICE SYSTEM

ORDER TO REPORT FOR ARMED FORCES PHYSICAL EXAMINATION

[Left blank]

(Local Board Stamp)

February 19, 1952

(Date of mailing)

To (First name) *Joe* (Middle name) *V.* (Last name) *Gonzales* (Selective Service Number) *20 95 31 424*

You are hereby directed to report for armed forces physical examination at (Place of reporting) *Fort Wayne Induction Station 6301 W. Jefferson Gymnasium Detroit, Michigan* at (Hour of reporting) *7:30 A.m.*, on the (Day) *28th* of (Month) *February, 1952.*

61a

Order to Report for Physical Examination

[Signature]
(Member or clerk of Local Board)

* * *

SSS Form No. 223

Joe V. Gonzales
8538 Hamilton
Det. 2, Michigan
Feb. 20, 1952

Michigan Local Board No. 95
Wayne County
1050 West Fort Street
Detroit, Michigan

FEB 25 1952
[Local Board Stamp]

Dear Sirs:

In consideration of the classification, which I received this morning in which I was classified as a I-A I am writing for an appeal to the board, due to the fact, which I feel I was not classified according to the information that I have submitted.

Yours truly
Joe V. Gonzales

CERTIFICATE OF ACCEPTABILITY

Last Name-First Name-Middle Name Present Home Address
Gonzales, Joe Valdez 8538 Hamilton Detroit, Michigan
Selective Service Number *20 95 31 424*
Local Board Address *Local Board No. 95, 1050 W. Fort St.*

*Government's Ex. No. 1—Selective Service File**Detroit, Michigan*

* * *

FEB 26 1953
[Local Board Stamp]

Date	Place	Typed or stamped name and grade of joint examining and induction station commander
<i>28 Feb 52</i>	<i>Detroit, Michigan</i>	<i>Clarence Carey, Major USAF</i>
<i>29 Feb 53</i>		

Signature

Clarence Carey

DD Form 62 1 Nov 51

FEB 25 1953

**MICHIGAN STATE HEADQUARTERS
SELECTIVE SERVICE SYSTEM**

735 E. Hazel Street
Lansing 12, Michigan
14 April 1952

Board of Appeal
Selective Service System
435 Tussing Building
Lansing, Michigan

Re: Joe V. Gonzales
SS No. 20-95-31-424

Gentlemen:

Cover sheet for the above named registrant has been reviewed in this Headquarters, and it is believed that your Board of Appeal should now consider the evidence and determine the classification into which you believe the registrant should be placed.

If after reviewing the file of this registrant, your Board is not of the opinion that the evidence warrants a deferred

63a

Letter of State Headquarters to Appeal Board

classification or classification in Class I-O, it will be necessary for you to process him in accordance with the Selective Service Regulations and refer his file to the office of the United States Attorney in view of the claims of conscientious objection.

Sincerely,
Arthur A. Holmes
Arthur A. Holmes
Lt. Colonel, Infantry
Acting State Director

APR 16 1952
[Local Board Stamp]

14 April 1952

Board of Appeal
Selective Service System
435 Tussing Building
Lansing, Michigan

Re: Joe V. Gonzales
SS No. 20-95-31-424

Gentlemen:

Cover sheet for the above named registrant has been reviewed in this Headquarters, and it is believed that your Board of Appeal should now consider the evidence and determine the classification into which you believe the registrant should be placed.

If after reviewing the file of this registrant, your Board is not of the opinion that the evidence warrants a deferred classification or classification in Class I-O, it will be necessary for you to process him in accordance with the Selective

Government's Ex. No. 1--Selective Service File

Service Regulations and refer his file to the office of the United States Attorney in view of the claims of conscientious objection.

Sincerely,
Arthur A. Holmes
Lt. Colonel, Infantry
Acting State Director

AAH:ab
cc: L. B. 95

* * *

Appeal Board Panel II
1120 May Street
Lansing, Michigan
June 6, 1952

Mr. Philip C. Hart
United States Attorney
Eastern District of Michigan
813 Federal Building
Detroit 26, Michigan

Re: Joe V. Gonzales
Wayne County
SS 20-05-31-424

Gentlemen:

The *Appeal Board*, Panel II, for the Eastern District of the State of Michigan, has reviewed the above named registrant's cover sheet and has determined that he should not be classified in either a class lower than Class I-O or

Letter of Appeal Board to U. S. Attorney

in Class I-O, and action is therefore being taken under Section 1626.25 (4) of the Selective Service Regulations.

We are transmitting the entire file to you for an advisory recommendation thereon.

Very truly yours,

By the direction of the Appeal Board, Panel II for the Eastern Federal Judicial District of the State of Michigan:

[Signature]

Clerk

Appeal No. 979

SELECTIVE SERVICE SYSTEM
Appeal Board for State of Michigan
Panel No. 2 Eastern Judicial District
1120 May Street
Lansing, Michigan
(Local Board Stamp)

July 3, 1952

JUL 7 1952

[Local Board Stamp]

Michigan Local Board No. 95
Wayne County
1050 West Fort Street
Detroit, Michigan

Re: Joe V. Gonzales
SS 20-95-31-424

Gentlemen:

In accordance with Section 1626.25 (4) of the Selective

Government's Ex. No. 1—Selective Service File

Service Regulations, we have forwarded the above cover sheet to the Department of Justice, Eastern District of Michigan, for the purpose of securing an advisory recommendation thereon.

Upon receipt of the cover sheet the Appeal Board will take action and the file will then be returned to you.

Very truly yours,

By the direction of the Appeal Board, Panel II for the Eastern Federal Judicial District of the State of Michigan:

M. L. Finn

M. L. Finn, Clerk

DEPARTMENT OF JUSTICE

Washington, D. C.

December 1, 1952

Chairman, Appeal Board, Eastern
District of Michigan, Panel No. 2
Selective Service System
435 Tussing Building
Lansing, Michigan

Re: Joe V. Gonzales
S. S. No. 20-95-31-424

Dear Sir:

As required by section 6(j) of the Universal Military Training and Service Act, an inquiry was made in the above-mentioned case and an opportunity to be heard on his claim for exemption as a conscientious objector was given to the registrant by Honorable John C. Ray, Hearing Officer for the Eastern District of Michigan.

Recommendation of Department of Justice

Registrant was born July 22, 1931, in San Antonio, Texas. He left the Edison High School of that city in June, 1948, after two years of attendance and took employment as a sheet metal worker with a local firm. He married his present wife in September, 1948. In the summer of 1949 he came to Detroit and worked as a laborer for the Adams Lumber Company until July, 1950. From August, 1950 to present he has been employed as a laborer and general maintenance man at the Great Lakes Steel Corporation. Registrant previously was a Catholic and has five sisters and a brother all of whom are Catholics. His parents were Catholics. His mother is dead and his father lives in San Antonio, Texas. Registrant's wife became a Jehovah's Witness in 1941 and registrant was baptized a member in February, 1950. In October, 1950, he became a "pioneer" and he participates in the usual activities of his sect, attending several weekly meetings including the Theocratic Ministry School. He also does house to house work and sells the publications of the sect. Registrant bases his claim for exemption upon his own personal interpretation of the Bible with the guidance of the Watchtower Bible aids and relies particularly on the Ten Commandments. He believes in the use of force in self defense.

The investigation reflects that registrant is well regarded in the several communities in which he has lived and that he and his wife are said to be very religious. Neighbors advise that they hold Bible studies in their apartment and appear to devote considerable time to religious work. References and co-religionists state that he is a devoted member of the sect and applies himself earnestly to his religious work. Employment records reveal that registrant was remembered as a good worker and that his record is good and contains no derogatory information.

After a personal appearance, the Hearing Officer stated that registrant appeared to be a sincere Jehovah's Witness

Government's Ex. No. 1—Selective Service File

but concluded that his affiliation with that sect has been too recent and too closely related to his draft status to warrant the acceptance of his conscientious objector position as genuine. The fact that registrant became a member of the Jehovah's Witness sect one month after his Selective Service System registration in January, 1950, despite the fact that his wife had been a member for many years, lends weight to this conclusion.

After consideration of the entire file and record, the Department of Justice finds that the registrant's objections to combatant and noncombatant service are not sustained. It is, therefore, recommended to your Board that registrant's claim for exemption from both combatant and non-combatant training and service be not sustained.

The Selective Service Cover Sheet in the above case is returned herewith.

Sincerely,
T. Oscar Smith
T. Oscar Smith
Special Assistant to the Attorney General

**SELECTIVE SERVICE SYSTEM
INDIVIDUAL APPEAL RECORD**

APR 8 1952

(Local Board Stamp)

Name of registrant (Last) *Gonzales* (First) *Joe* (Middle)

V. Selective Service Number *20 95 31 424*

Classified by local board in Class *I-A* . . .

Date classified *February 19, 1952*

Forwarded on appeal taken by *Registrant*

Date forwarded to Appeal Board *April 8, 1952*

Jean G. Seppi

Member or Clerk of Local Board.

Classification by Appeal Board in I-A

Minutes of Action by Appeal Board

Appeal Board Panel II for the State of Michigan (Street and number) *1120 May Street* (City) *Lansing*

Classified in Class *I-A* until . . . by the following vote:

Yes 3 No 0 (Date of classification by Appeal Board)
December 11, 1952

Margaret L. Finn
Member or Clerk of Appeal Board

* * *

SSS Form No. 120

APR 10 1952

DEC 8 1952
APR 15 1952

476 West Grand Blvd.
Detroit 16, Michigan
Selective Service No.

20-95-31-424

December 21, 1952

State Director
Michigan State Selective Service Bureau
Capitol Savings & Loan Building
112 E. Allegan Street
Lansing 4, Michigan

Dear Sir:

I have received notification of my classification as I-A from Local Board #95.

I request that you withhold induction notice until such time as you can review my case. Due to the fact that I am a minister of Jehovah's Witnesses and have been a Pioneer minister for over two years, I feel that an injustice has been done to me in classifying me as I-A. All the facts in my file

Government's Ex. No. 1—Selective Service File

show that I am a Pioneer, also an appointed servant in the local company of Jehovah's Witnesses, and because of this I feel that the local board has erred in this classification, and therefore I am appealing their decision.

Please look into the matter and advise me further.

Yours truly,

Joe V. Gonzales

Joe V. Gonzales

JVG:W

* * *

DEC 29 1952
[Local Board Stamp]

MICHIGAN STATE HEADQUARTERS
SELECTIVE SERVICE SYSTEM
Arnold Building, 1120 May Street
Lansing 3, Mich.

5 January 1953

JAN 6 1953
[Local Board Stamp]

Michigan Local Board No. 95
Wayne County
1050 West Fort Street
Detroit, Michigan

Re: Gonzales, Joe V.
SS No. 20-95-31-424

Gentlemen:

It is requested that the Cover Sheet for the above-named registrant be forwarded to this Headquarters for review.

71a

Letter of State Director to Local Board

For the State Director,
M. J. Stahl
M. J. Stahl
Lt. Colonel, AF Res.
Operations Section

S-901

January 6, 1953

Michigan State Headquarters
Selective Service System
Post Office Box 626
Lansing 3, Michigan
Attention: Colonel M. J. Stahl

Re: Gonzales, Joe V.
SS No. 20-95-31-424

Gentlemen:

Transmitted herewith is the Cover Sheet for the above-named registrant as you requested.

For the Local Board
[Signature]
Jean G. Seppi, Clerk

JGS

13 January 1953

SS No. 20-95-31-424

Mr. Joe V. Gonzales
476 West Grand Blvd.
Detroit 16, Michigan

Dear Mr. Gonzales:

This will acknowledge receipt of your letter of 21 Decem-

Government's Ex. No. 1--Selective Service File

ber 1952 in which you have expressed the opinion that you have not been properly classified and have requested a review of your case.

Under the Universal Military Training and Service Act, it is the responsibility of the local board to classify registrants under its jurisdiction, subject to appeal procedures.

Upon receipt of your letter this headquarters has examined the contents of your Selective Service file. This examination reveals that you have been granted all of your procedural rights under the law, including the right to a personal appearance before your local board and the right of appeal.

On 11 December 1952 the State Appeal Board determined your classification to be I-A as available for military service by unanimous vote of 3 to nothing. With no dissenting vote in the decision of the appeal board, the law does not provide for further right of appeal on the part of the registrant.

We regret that your letter and the examination of your Selective Service file does not reveal sufficient basis for this headquarters to intercede in the normal processing of your case.

For the State Director,
Robert W. Lundquist
Captain, Artillery
Operations Section

RWL:ml

cc: Local Board with cover sheet
Col Stahl

GOVERNMENT'S EXHIBIT NO. 6

I am requesting a copy of the hearing before the local board, this 2 day of Feb. 1953.

Joe V. Gonzales

And have received a copy thereof, on this same day of 2 of Feb. 1953

Joe V. Gonzales

FEB 2 1953

[Local Board Stamp]

**SELECTIVE SERVICE SYSTEM
ORDER TO REPORT FOR INDUCTION**

(Local Board Stamp)

FEB 3 1953

(Date of mailing)

The President of the United States,

To (First name) *Joe* (Middle name) *V* (Last name) *Gonzales* (Selective Service Number) *20 95 31 424* (Street and number) *476 West Grand Blvd.* (City) *Detroit 16* (State) *Mich*

Greeting:

Having submitted yourself to a Local Board composed of your neighbors for the purpose of determining your availability for service in the Armed Forces of the United States, you are hereby ordered to report to the Local Board named above at (Place of reporting) at

(Hour of reporting) m., on the (Day)
of (Month) *FEB 19 1953* for forwarding to an induction station.

[Signature]

(Member or clerk of Local Board)

Government's Ex. No. 1—Selective Service File

* * *

SSS Form No. 252

MICHIGAN STATE HEADQUARTERS
SELECTIVE SERVICE SYSTEM
Arnold Building, 1120 May Street
Lansing 3, Mich.

24 February 1953

FEB 25 1953
[Local Board Stamp]

Michigan Local Board No. 95
Wayne County
1050 West Fort Street
Detroit, Michigan

Re: Gonzales, Joe V.
SS No. 20-95-31-424

Gentlemen:

It is requested that the Cover Sheet for the above named registrant be forwarded to the attention of the undersigned for review.

Sincerely yours,
Arthur A. Holmes
Colonel, Infantry
State Director

75a

Letter of Local Board to State Director

February 25, 1953

State Director
Michigan State Headquarters
Selective Service System
Post Office Box 626
Lansing 3, Michigan

Re: Gonzales, Joe V.
SS No. 20-95-31-424

Dear Sir:

Transmitted herewith is the Cover Sheet for the above-named registrant for review, as requested.

For the Local Board
[Signature]
Jean G. Seppi, Clerk

JGS
enclosure

MICHIGAN STATE HEADQUARTERS
SELECTIVE SERVICE SYSTEM
735 E. Hazel Street
Lansing 12, Michigan

9 April 1953

APR 14 1953

[Local Board Stamp]
Michigan Local Board No. 95
Wayne County
1050 West Fort St.
Detroit, Michigan

Re: Gonzales, Joe V.
SS No. 20-95-31-424

Government's Ex. No. 1—Selective Service File

Gentlemen:

Enclosed is the Cover Sheet for the above-named registrant.

For the State Director,
Robert W. Lundquist
Robert W. Lundquist
Captain, Artillery
Operations Section

Enclosure: Cover Sheet

SELECTIVE SERVICE SYSTEM
DELINQUENT REGISTRANT REPORT

(Local Board Stamp) (Date) April 15, 1953
TO: Hon. Joseph C. Murphy Chief Assistant, United
State Attorney. (Address) 813 Federal Building, Detroit,
Michigan

1. Identification of Delinquent:

Full name of delinquent: (Last) Gonzales (First) Joe
(Middle) Valdez (Alias, if any) Boyo or Boy

* * *

2. Offenses:

This delinquent failed to report for induction into the
Armed Forces pursuant to . . .

The order indicated was mailed on (Date of mailing)
February 3, 1953 to this delinquent at (Address) 476 West
Grand Blvd., Detroit, Michigan to report on (Date) Feb-
ruary 19, 1953.

In addition to failing to report for induction into the
Armed Forces this delinquent has also failed to perform
the following duties at the times indicated:

Duties

Reported for induction but refused to submit to induction
SSS Form No. 301

Notice of Refusal to Submit to Induction

* * *

[Signature]
(Member or clerk of local board)

* * *

WFM/mle
19 February 1953

327.36

SUBJECT: Induction Refusal
To: United States District Attorney
Federal Building
Detroit 26, Michigan

1. Notification is hereby tendered that on this date the following named individual refused to submit to induction at this station:

- a. Name - Joe Valdez Gonzales
- b. Address - 476 West Grand Boulevard, Detroit Michigan
- c. Selective Service Number - 20 95 31 424
- d. Selective Service Board - Michigan Local Board No. 95, Wayne County, 1050 West Fort Street, Detroit, Michigan

2. The registrant appeared at this station as scheduled and was processed through the normal routine of induction. He was asked to step forward for induction and refused. He was then informed that his refusal constituted a felony under the provisions of the Selective Service Regulations and that conviction of such an offense under civil proceedings would subject him to be punished by imprisonment for not more than five years or a fine of not more than \$10,000 or both. After being informed of these provisions, he was again asked to step forward for induction and still refused. He stated his reason for refusal was his

Government's Ex. No. 1—Selective Service File

religious training. He voluntarily signed a statement indicating his refusal to be inducted into the Armed Forces of the United States.

3. Names and addresses of witnesses are as follows
Capt. Walter F. Mason
Sgt. George K. Vass
6301 W. Jefferson Ave., Detroit 17, Michigan
For the Officer in Charge:

[Signature]
Walter F. Mason
Captain, Armor
Asst Adjutant

1 Incl.: Statement

CC: State Director, Selective Service Hq. Box 626, Lansing, Michigan Local Board #95, Wayne County, 1050 W. Fort St., Detroit, Michigan

MOTION FOR JUDGMENT OF ACQUITTAL**MAY IT PLEASE THE COURT:**

Now comes the defendant and moves the court for a judgment of acquittal for each and every one of the following reasons:

1. There is no evidence to show that the defendant is guilty as charged in the indictment.
2. The Government has wholly failed to prove a violation of the Act and Regulations by the defendant as charged in the indictment.
3. The undisputed evidence shows that the defendant is not guilty as charged.
4. The denial of the conscientious objector status by the local board and the board of appeal and the recommendation by the hearing officer of the Department of Justice and by

Motion for Judgment of Acquittal

the Department of Justice and board of appeal were without basis in fact, arbitrary, capricious and contrary to law.

5. The recommendation of the Department of Justice relied upon by the board of appeal is arbitrary, capricious and illegal because it refers to artificial, fictitious and unlawful standards not authorized by the Act and Regulations and advises the appeal board to classify according to irrelevant and immaterial lines in determining that the defendant was not a conscientious objector when a pursuit of the Act and Regulations was the only thing for the hearing officer and the appeal board to follow.

6. The undisputed evidence at the trial and the draft board records received into evidence show that there was a violation of procedural rights of the defendant before the local board on personal appearance because, at the time he appeared before the board, they had their minds made up not to reconsider his case and all of his claims *de novo* and they merely heard and listened to him with the intention of giving him the same classification given to him before the personal appearance so that he could appeal; accordingly, there was no *de novo* classification by the local board upon personal appearance as though he had never been classified which violated Section 1624.2 of the Regulations.

7. The undisputed evidence shows that upon the trial the draft board members were prejudiced and discriminated against the defendant because of his membership in Jehovah's Witnesses, a religious organization, contrary to Section 1622.1 (d) of the Regulations.

8. The local board deprived the defendant of procedural rights to a full and fair hearing before the board of appeal by failing to make an adequate and full written memorandum of the new additional oral evidence given by the defendant upon the occasion of his personal appearance, which new and additional oral evidence does not otherwise appear in the written papers sent to the board of appeal.

Motion for Judgment of Acquittal

9. The undisputed evidence shows that the draft boards violated the Regulations by denying the defendant his claim for classification as a conscientious objector because he had pressed before the Selective Service System his claim for exemption as a minister of religion.

10. The use of the secret investigative report of the F.B.I. without notifying or confronting the defendant with the substance of, or the parts of it, which were considered by or relied upon by the hearing officer upon the occasion of the hearing before the Department of Justice hearing officer and also the failure to include all of the evidence in the F.B.I. report relied upon by the hearing officer and all that appeared in the F.B.I. report and that was considered by the hearing officer, and also the failure to put all of such evidence in the F.B.I. report in the draft board file for the use of the board of appeal and the court, constitute a deprivation of defendant's rights to procedural due process of law in violation of the Fifth Amendment to the United States Constitution and also is a clear and unequivocal violation of the Selective Service Act of 1948 (or Universal Military Training and Service Act) and the Regulations promulgated thereunder. (Section 1622.1 (b))

11. The use of the report of the Hearing Officer of the Department of Justice, and reliance upon it by the Assistant to the Attorney General without notifying or confronting the defendant with the substance of the report, and also the failure to include the entire report of the hearing officer relied upon by the Assistant to the Attorney General in the draft board file for the use of the appeal board and the Court constitutes a deprivation of defendant's rights to procedural due process of law in violation of the Fifth Amendment to the United States Constitution, and also is a clear and unequivocal violation of the Selective Service Act of 1948 or Universal Military Training and Service Act, and the Regulations promulgated thereunder.

Motion for Judgment of Acquittal

WHEREFORE, the defendant prays that a judgment of acquittal be rendered and entered.

Respectfully submitted,
Harold E. Leithauser
Attorney for Defendant

ORDER DENYING MOTION FOR JUDGMENT OF ACQUITTAL AND FINDING DEFENDANT GUILTY

Defendant was tried by the court without a jury on a charge of violating Sec. 462(b), Title 50 App., U. S. C., by failing to submit to induction into the armed forces. Throughout these proceedings he was represented by counsel. A waiver of trial by jury is on file.

Information in defendant's Selective Service file discloses that he registered with his local draft Board on January 4, 1950. In his Classification Questionnaire he indicated that he was a conscientious objector and also claimed exemption as a minister of Jehovah's Witnesses. Form SSS 150, the Special Form for Conscientious Objectors was furnished to him by the Board and was filled out and filed by defendant. The Local Board classified him III-A from which classification he appealed but the same class was assigned to him by the Appeal Board. Nine months later he was reclassified I-A, whereupon he requested and was granted a personal appearance before the Local Board, but this Board again classified him I-A and he again appealed. The Appeal Board reviewed his file and determined that he should not be classified in either a class lower than I-O (the class in which are placed conscientious objectors opposed to both combatant and non-combatant training and service) or in Class I-O and, as required by Regulations governing claims of conscientious objectors, the Selective

Order Denying Motion for Acquittal

Service file of this registrant was referred to the Department of Justice for an investigation and hearing before a hearing officer on the character and good faith of his conscientious objector claim and for an advisory recommendation. The Department of Justice, after the investigation and hearing, recommended to the Appeal Board that defendant's claims for exemption from both combatant and non-combatant service be not sustained. The Appeal Board, by a vote of 3-0, gave defendant a classification of I-A. He then requested the State Director of the Selective Service to withhold notice of induction until his file could be reviewed by that office but was informed that all procedural rights permitted under the law were granted to him and no further right of appeal existed, also that facts contained in the file afforded no basis for that headquarters to intercede in the normal processing of the case.

After a physical examination defendant was found acceptable for military service and a notice to appear for induction on February 19, 1953, was mailed to him. He appeared at the induction center but refused to submit to induction on the ground of religious training. This prosecution followed.

At the conclusion of the Government's case defendant moved for a judgment of acquittal. Decision on the motion was reserved.

One of the grounds for the motion is that the Government failed to prove a violation of the Selective Service Act and Regulations by defendant, as charged in the indictment. The duty to report for induction in accordance with the draft board's order includes the duty to submit to induction, and breach of such duty is a crime as defined by Sec. 462, Title 50 App., U. S. C., making criminal a willful failure to perform any duty required of a registrant. See *Estep v. U. S.*, 327 U. S. 114. In a prosecution for violation of an induction order proof by the Government that a defendant

Order Denying Motion for Acquittal

had been processed and ordered to report for induction, that he appeared for induction but refused to submit to induction, establishes the Government's case, putting the defendant to his defense. This showing was made by the Government and, unless the defendant established a valid defense, he is guilty of the offense with which he is charged.

The duty to classify registrants under the Selective Service Act and to grant or deny exemptions rests solely upon the draft boards, local and appellate. Decisions of local boards are made final under the law. This means that Congress chose not to give administrative action under the Act the customary scope of judicial review which obtains under statutes and that the court does not weigh the evidence to determine whether the classification made by the local boards was justified. Their decisions are final, if made in conformity with the regulations, even though they may be erroneous. The question of jurisdiction of the local boards is reached only if there is no basis in fact for the classification which it gave registrant. *Estep v. U. S.*, supra. Defendant charges, in his motion, that the classification he received was arbitrary and capricious and without basis in fact and that, in so classifying him, the local and appeal boards proceeded in violation of Regulations promulgated under the Selective Service Act.

Defendant was baptized as a Jehovah's Witness one and one-half months after his registration with the local draft board. Prior to his affiliation with this sect he was a Catholic, in which religion he was reared by his parents, together with his five sisters and a brother. His entire family still professes that faith. In September, 1948, defendant married a woman who had been a Jehovah's Witnesses for many years but he seemed to evince no interest in the sect after his marriage until just prior to or shortly after his registration. In SSS Form 150 he claims that he joined Jehovah's Witnesses in December, 1949. He was baptized in that

Order Denying Motion for Acquittal

religion on February 19, 1950, a month and a half after his registration, and claims the status of a minister from that date. In his Special Conscientious Objector Form he gave the religion of both his parents as Catholic; he described his activity with the sect since December, 1949, and his recognition as a pioneer in October, 1950, as the actions and behavior in his life which in his opinion most conspicuously demonstrate the consistency and depth of his religious convictions and, other than that, he answers that he has given no public expression, written or oral, to the views expressed in this special form as the basis of his claim for exemption. On the occasion of his personal appearance before the Local Board he testified that no ordination certificate was issued to him but that he had a Pioneer Assignment card and had some prescribed duties as a pioneer, being the advertising servant of the downtown unit, taking care of all the advertising duties; that they have some 2000 magazines which he takes care of each month, to see that they are distributed and if any more are needed; that his group meets every Thursday and sometimes "talks are handed to him" that he should make and at other times he conducts Bible studies with different people in various homes of members. From the time he first made claim for exemption he was employed on a full-time basis with the Great Lakes Steel Corporation which, according to his own admissions, manufactures some articles of war. He also testified before the Local Board that Jehovah's Witnesses had no creed or official statement directly relating to war but that this is a matter for each one to determine according to his own conscience; that there are some Jehovah's Witnesses who have joined the army and navy but did so according to the dictates of their own conscience.

In support of defendant's claims as a minister of Jehovah's Witnesses he submitted to the Local Board an affidavit, dated April 1, 1951, signed by a number of Jehovah's

Order Denying Motion for Acquittal

Witnesses, testifying to the fact that they observed him performing the duties of a minister for the past one and one-half years and that they recognized him as a minister, but, even if his own statement that he became a Jehovah's Witness in December, 1949, be accepted as true, he was not a Jehovah's Witness eighteen months prior to the date on which the affidavit was signed, April 1, 1951.

Under the facts disclosed by defendant's Selective Service file it is the considered opinion of this court that the classification of I-A assigned by the local and appellate boards to the defendant was not without basis in fact. Such decisions relative to his classification are, therefore, final unless such Boards, in reaching their decisions, proceeded in violation of the Act or Regulations.

A violation of the Regulations in several respects is charged. Defendant contends that on the occasion of his personal appearance before the Local Board its members made up their minds not to reconsider defendant's claims de novo but only heard him with the intention of giving him the same classification so that he could appeal; that he was not given a de novo classification, as required by Regulations, that the Board members were prejudiced and discriminated against him because of his membership in Jehovah's Witnesses; that the draft Board denied him his claim for classification as a conscientious objector because he had pressed his claim for exemption as a minister of religion before the Selective Service System. There is nothing in the evidence to substantiate these charges.

Another ground for acquittal contained in the motion is that the Local Board deprived defendant of procedural rights to a full and fair hearing before the Appeal Board by failing to make an adequate and full written memorandum of the new additional oral evidence given by defendant upon the occasion of his personal appearance, which new and additional oral evidence does not otherwise appear in

Order Denying Motion for Acquittal

the written papers sent to the Appeal Board. The facts reveal that on the occasion of the personal appearance before the Local Board notes were taken in longhand and also more complete notes for transcription later. At the conclusion of the hearing defendant requested a copy of the notes "so if the Board asked a certain question I would know what I answered." Registrant was informed that the notes were for the Selective Service file and such notes were later transcribed and placed in the file. Subsequently, defendant requested and acknowledged in writing receipt of a copy of this transcript on February 2, 1953. At no time, since that date, did he complain that such transcript was inadequate, incomplete, or incorrect, until he testified at the trial that answers which he gave were not stated therein correctly. He gave only one instance, however, testifying that when he was asked about his employment with the Great Lakes Steel Corporation and the fact that they manufactured articles of war he answered that even if he raised hogs, which were sold to the market, and the Government bought them on the market, it was beyond his control and not his business to whom the hogs were sold and it was the same thing about his income tax. The transcript gave this portion of his testimony as, "I feel I have to make my living somehow even if I raised pigs, and I am still doing the same thing when I pay my income tax. I do not know where the money goes but that is not my business . . ." Defendant admitted, on cross-examination, that he never previously complained about the alleged incorrectness of the notes. Regulation 1624 requires only that any further information offered to the Local Board at the time of personal appearance before that Board shall be in writing, or, if oral, shall be *summarized* in writing and, in either event, shall be placed in the file of the registrant; the information furnished should be as concise as possible under the circumstances. This Regulation is not ambiguous and has been

Order Denying Motion for Acquittal

construed to require nothing more than a short written summary of the oral evidence received at the personal hearing. The transcript on file more than adequately summarizes the information submitted by defendant. See *Niznik v. U. S.* (C. A. 6th Cir.) 173 F. 2d 328; *Dickinson v. U. S.* 203 F. 2d 336.

An additional ground for the motion of acquittal is the charge that use of the secret investigative report of the F.B.I. without notifying or confronting defendant with the substance thereof, the failure to include all the evidence contained in such report, and use of the hearing officer's report and reliance thereon by the Assistant to the Attorney General, without notifying or confronting defendant with the substance thereof, as well as failure to include the entire report of the hearing officer and the F.B.I. in the draft board file of defendant, all constitute a deprivation of defendant's rights to procedural due process of law, in violation of the Fifth Amendment of the U. S. Constitution and the Selective Service Act and Regulations. Counsel for defendant urges that defendant was deprived of his constitutional rights of confrontation by being refused the right to be made cognizant of those persons who may have testified against him. In *U. S. v. Nugent*, 346 U. S. 1, it was held that a registrant is not permitted, under the Act and Regulations, to see the F.B.I. investigator's report nor to be informed of the names of persons interviewed by the investigator; that the requirement of Sec. 6(j) of the Act—that the Department of Justice afford registrant a hearing—does not require it to entertain an all-out collateral attack on the testimony obtained in the prehearing investigation; and, that the Act, as thus construed and applied, does not violate the Fifth Amendment. See also *Bejelis et al. v. U. S.* (C. A. 6th Cir.) decided July 20, 1953; *U. S. v. Del-Santo*, 205 F. 2d 429. Regulation 1626.25, in effect at the time of hearing before the hearing officer, provides merely

Order Denying Motion for Acquittal

that the Appeal Board shall place in a registrant's file the letter containing the recommendation of the Department of Justice. The Appeal Board complied with this requirement. These grounds in the motion are not sustained.

In its advisory recommendation the Department of Justice incorporates the conclusions reached by the hearing officer that defendant's affiliation with Jehovah's Witnesses has been too recent and too closely related to his draft status to warrant the acceptance of his conscientious objector position as genuine and the fact that he became a member one month after his registration in January, 1950, despite the fact that his wife had been a member for many years, lends weight to this conclusion. This recommendation gives rise to another ground in defendant's motion for acquittal as referring to artificial, fictitious and unlawful standards not authorized by the Act and Regulations and advises the Appeal Board to classify according to irrelevant and immaterial lines in determining that defendant was not a conscientious objector. The only purpose of Selective Service file referrals to the Department of Justice, in cases of conscientious objectors, as clearly set forth in the Regulations, is for an investigation and a hearing on the character and good faith of the conscientious objections of registrants. This is a special procedure, applicable only to claims of conscientious objectors. In such cases the boards are confronted with the difficult and complex decision in which the sincerity of another's religious convictions becomes the ultimate factual issue. Counsel for defendant cites a case in which another court held that all Jehovah's Witnesses are conscientious objectors. Defendant himself advances a contradictory view, since he stated on more than one occasion that this sect had no creed or official statement directly relating to war but left that matter to each one's conscience. The issue is not whether the registrant was a Jehovah's Witness at the time of his classification, nor

Order Denying Motion for Acquittal

whether he applied himself to his religious duties in that sect. It stems from defendant's claim that by reason of his religious training and convictions he is conscientiously opposed to participation in war in any form. This claim is initially set forth in SSS Form 150 and therein a registrant gives detailed information to aid in determining the sincerity of such claim. Regulations 1622.14 provides that in Class I-O, the classification which defendant seeks, in the alternative to his claim as a minister, shall be placed every registrant *who has been found* (not who claims), by reason of religious training and belief, to be conscientiously opposed to both combatant and non-combatant training and service in the armed forces. As was stated in the *U. S. v. Nugent* decision, supra, a registrant claiming this classification must convince the draft board, composed of representatives of his own community, of the *depth* and *sincerity* of his convictions; he must fill out forms, calculated to put him to the test; he must supply any additional detailed information which may be necessary for a *searching investigation* of such claim. Every factor which may have bearing on the claim may and should be considered, both by the boards and the hearing officer of the Department of Justice; from the mass of information on hand facts inconsistent with the claim made should be ferreted out and examined to determine whether the claim is a mere assertion utilized in an effort to circumvent Selective Service legislation or whether it is genuine and of the character which Congress had in mind when it gave express statutory recognition to the rights of conscience and adopted new and special procedures, under the present Selective Service Act, to secure those rights. See *U. S. v. Nugent*, supra. The hearing officer is not limited to mere inquiry as to a registrant's reputation for truth and veracity and, if he be found truthful, it is not mandatory that he accept as conclusive the registrant's claim that he is a conscientious objector if other data in the

Order Denying Motion for Acquittal

file casts doubt on the good faith in which the claim is made, or the purpose for which it was advanced. It is true, as claimed by counsel for defendant, that the registrant's actual status at the time of classification and not as of the time of registration controls, but it does not follow that information submitted at the time of registration may not be considered, particularly in cases of conscientious objectors, when earlier data may supply clues as to the genuineness of the status claimed at the time of classification. The factors which the hearing officer considered were not irrelevant, viewed in this light. Furthermore, the advisory recommendation and information therein are not binding upon the Appeal Board; it could consider such recommendation but was not bound by it in any manner, and it was so advised by the Regulations; it had the complete Selective Service file before it at all times when this registrant's case was before it and had access to facts therein contained and had a right to make its own appraisal of those facts. This court finds that this phase of the proceedings under attack by defendant has not been conducted in violation of the Regulations.

In addition to grounds stated in the motion for acquittal counsel for defendant attacked the validity of the proceedings for other reasons, one of which is that at the personal hearing before the Local Board defendant's witness was not permitted to testify on defendant's behalf. Defendant appeared at this hearing with another Jehovah's Witness and was informed that the witness would be permitted to testify after defendant was examined. When such examination was completed the Board member asked defendant what he wished to present through his witness and defendant stated that the last time he was at the office of the Board he overlooked mentioning that this witness is the servant who is supposed to sign his Pioneer Assignment card, that he "showed the card to the witness and the witness OK'd it

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and took it to sign;" also, that the witness could verify statements made by defendant to the board. He was informed that it would not be necessary to verify this information as defendant was sworn and gave his statements under oath. Regulations 1624.1(b) provides that no person other than a registrant shall have the right to appear in person before the Local Board, but the Local Board may, in its discretion, permit any person to appear before it with or on behalf of a registrant. Under the circumstances above related the Local Board did not violate this Regulation nor did it abuse its discretion in hearing testimony of this witness to verify statements made by defendant himself.

Charged as a deprivation of defendant's rights under the Statute and Regulations as Constitutional rights of due process of law is the fact that, although defendant claimed exemption before the Department of Justice Hearing Officer both as a conscientious objector and as a minister, there is no indication whatsoever that said Officer even entertained defendant's claim as a minister, in that the Appeal Board was therefore deprived of the benefit of the Hearing Officer's investigation relative to the claim as a minister. Regulation 1626.25 which directs referral of Selective Service files to the Department of Justice for investigation and a hearing before a hearing officer on the character and good faith of conscientious objections of registrants obviously has application only to cases of conscientious objectors and not those which involve other claims for exemption. A claim for exemption as a minister of the Gospel is beyond the scope of this Regulation.

Finally, counsel also contends that the statement in the hearing officer's report, incorporated in the advisory recommendation of the Department of Justice, distorts facts because it concludes that defendant became a member of Jehovah's Witnesses one month after his registration. Defendant claims he became a member in December, 1949, or

Order Denying Motion for Acquittal

prior to his registration on January 4, 1950. He was baptized in February, 1950. The hearing officer had a right to believe or disbelieve defendant's claims and reach his own conclusion, as a reasonable man, what the facts were in the light of all surrounding circumstances. If he concluded that defendant actually became a member of the sect the month during which he was baptized, which was the month following registration with the draft board, such conclusion cannot be termed a distortion of facts as defendant claims they exist. This charge is not sustained.

An examination of the entire record of proceedings in this case before the Selective Service boards and the Department of Justice reveals that defendant has been accorded every opportunity sought by him to prove his claims for exemption as a minister of the Gospel and as a conscientious objector, and that all such proceedings were taken in full compliance with the Selective Service Act and Regulations promulgated thereunder. The order to appear for induction was a valid order, disobedience of which constitutes a violation by defendant of the Selective Service Act, as charged in the indictment.

Defendant's motion for judgment of acquittal is hereby denied.

This court finds defendant, Joe Valdez Gonzales, guilty of the offense charged in the indictment.

[Signature]

Arthur A. Koscinski

United States District Judge

Dated: September 29, 1953.

JUDGMENT AND COMMITMENT

On this 26th day of October, 1953 came the attorney for the Government and the defendant appeared in person and by counsel.

IT IS ADJUDGED that the defendant has been convicted upon his plea of not guilty and a finding of guilty of the offense of failure to submit to induction in violation of Sec. 462(b), USC 50 App. as charged in the indictment and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

IT IS ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of three years; and to pay to the Clerk of the Court for the use and benefit of the United States of America a fine in the amount of Five Hundred (\$500.00) Dollars.

IT IS ADJUDGED that the appearance bond be canceled.

IT IS ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

Arthur A. Koscinski,
United States District Judge.

* * *

NOTICE OF APPEAL

Name and Address of Defendant; Appellant: Joe Valdez Gonzales, 301 Fourth Street, East Rochester, Michigan:

Names and Addresses of Appellant's Attorneys: Hayden C. Covington, 124 Columbia Heights, Brooklyn 2, New York; Harold E. Leithauser, 2504 Guardian Building, Detroit 26, Michigan.

Offense: Violation of the Selective Service Act of 1948 by refusing to be inducted into the land or Naval Forces.

Concise Statement of Judgment: Defendant was remanded to the custody of the Attorney General for a period of three (3) years and fined One Thousand (\$1,000.00) Dollars.

The bond of the appellant has been canceled pending this Appeal.

I, one of the attorneys for the above-named appellant, hereby appeal to the United States Court of Appeals for the Sixth Circuit, from the above-stated judgment.

[Signature]
Harold E. Leithauser

Dated: October 26, 1953.

IN THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

No. 12,094

JOE VALDEZ GONZALES, Defendant-Appellant,
vs.

UNITED STATES OF AMERICA, Plaintiff-Appellee

APPENDIX TO APPELLEE'S BRIEF—Filed February 24, 1954

MAHN, CLARA, was thereupon called as a witness on behalf of the defense and, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Leithauser:

Q. What is your full name, madam?

A. Clara Mahn.

Q. Where do you live, Mrs. Mahn?

A. 1136 Adams Street, Monroe, Michigan.

Q. What is your occupation?

A. I am a minister also.

Q. Are you acquainted with the defendant, Joe Valdez Gonzales?

A. Yes, I am.

Q. For how long a period have you known him?

A. Well, it's at least two years.

Q. Were you present with him at the time that he appeared before Mr. John C. Ray, the Hearing Officer for the Department of Justice?

A. Yes, I was.

Q. Were you present throughout the entire hearing?

A. Yes, I was.

Q. Will you tell us what recollection you have of that hearing as to what was said by one party and what was said by another?

A. Not too much. It is very much the same as it has been discussed before here, and I do remember this much, that Mr. Ray, when Joe went on to explain or tried to

explain certain things relative to his work and the different meetings that he went to, and so on, and phases of the work that he engaged in, Mr. Ray said that he needn't go into that at all because he was very familiar with all of our work. In fact, he went on to tell us about the Theocratic Ministry School, the street work, and all of that, and he said "You see, I've had so many of you folks here before that I'm very well acquainted with what you are doing. All I want to do is determine your sincerity. I don't care what religion you are, just so you would be sincere in your religion. That is what I am trying to determine."

Q. So he did not permit the defendant to testify?

The Court: Don't ask the witness leading questions and conclusions.

By Mr. Leithauser:

Q. Did you hear Mr. Ray say anything that you presently recall while Joe was attempting to testify? Can you recall any exact statements he made?

A. No, only in this one connection, as I stated, that I remember.

Q. In connection with what you have already testified?

A. Yes.

Mr. Leithauser: No further questions, your Honor.

Mr. Greenburg: No questions.

The Court: You may step down.

(Witness excused.)

IN UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT
CAUSE ARGUED AND SUBMITTED—April 5, 1954

Before McAllister and Miller, Circuit Judges, and Ford,
District Judge

This cause is argued by Hayden C. Covington for appellant and by Ronald L. Greenberg for appellee and is submitted to the Court.

IN UNITED STATES COURT OF APPEALS**JUDGMENT—Filed April 15, 1954****Appeal from the District Court of the United States for
the Eastern District of Michigan**

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Eastern District of Michigan, and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be and the same is hereby affirmed.

IN UNITED STATES COURT OF APPEALS**OPINION—Filed April 15, 1954****Before McAllister and Miller, Circuit Judges, and Ford,
District Judge****Per CURIAM:**

This ably presented and well argued appeal is from a conviction on charges of violating the Universal Military Training and Service Act and revolves about the determination of the appeal board. The district court held that the denial by the board of the conscientious objector and ministerial status claimed by appellant was not without a basis in fact and was not arbitrary and capricious, contrary to appellant's contentions on the trial, and on appeal. Appellant further claims that the recommendation of the Attorney General to the appeal board that appellant be denied the conscientious objector status was arbitrary and illegal and invalidated the final classification; and that the Department of Justice deprived appellant of his procedural rights to due process of law by not providing him with a copy of the report of the hearing officer and of the proposed recommendation by the Department of Justice to the appeal board before the recommendation was served upon the board; and that appellant was further denied due process of law by not being given an opportunity to answer the

adverse report and recommendation before his classification.

A review of the documentary evidence appearing in appellant's file and which was before the draft board and the appeal board for consideration, reveals, in the opinion of this court, that the appeal board did have a basis in fact for its determination, as was set forth in considerable detail in the order of the district court denying appellant's motion for acquittal, and finding appellant guilty of violation of the Act. As to the recommendation of the hearing officer to the appeal board, it clearly appears that such officer was principally occupied in ascertaining appellant's sincerity in making his claims to the conscientious objector and ministerial status. His finding that appellant appeared to be a sincere Jehovah's Witness, but that his affiliation with that religious body one month after his registration for service had been too recent to warrant acceptance of his claimed status, is not inconsistent, since members of the sect are not necessarily, by virtue of their membership, conscientious objectors, but each determines, according to his own conscience and according to his personal interpretation of the Bible, whether he may conscientiously engage in military service. As appellant testified before the draft board, some Jehovah's Witnesses have joined the Army and Navy "and that is by their own consciences." and such conduct conforms with appellant's interpretation of the Bible. As to the conclusion in the report that "registrant appeared to be a sincere Jehovah's Witness and as such is conscientiously opposed to war," this was followed by the statement that appellant disclaimed being a pacifist "and under certain circumstances, if attacked, would defend himself and members of his family to the point of taking life." The circumstances under which appellant would take life are "biblical circumstances," such as a command from God, of which appellant would be the sole judge, "by using the Word of God." A person, therefore, may be a sincere member of Jehovah's Witnesses and yet not be a conscientious objector. The hearing officer testified on the trial that his finding that the proximity of the time that appellant became a Jehovah's Witness to the time of his registration was the principal element why he concluded that appellant should not be

classified as a conscientious objector, but that the other factors also formed the basis for his opinion. The fact that one claims he is conscientiously opposed to military service shortly before being subject to the draft law and military service has no bearing on whether he is entitled to exemption as a conscientious objector. It has a bearing only upon the question whether he is sincere in claiming that he is conscientiously opposed to participation in military service. The recommendation of the Attorney General recited the hearing officer's conclusion and set forth the finding that appellant's claim was not sustained "after consideration of the entire file and record." The report of the hearing officer and the recommendation of the Attorney General are in no sense binding, but are merely advisory.

With respect to appellant's claim that he was denied due process by being deprived of a copy of the report of the hearing officer and of the proposed recommendation by the Department of Justice to the appeal board before such recommendation was submitted to the board, and the further claim that the appeal board denied appellant due process of law by not giving him an opportunity to answer the adverse report and recommendation prior to final classification have heretofore been decided contrary to appellant's contentions. *United States v. Nugent*, 346 U. S. 1, *Bejelis v. United States*, 206 F. 2d 354 (C. A. 6), *Imboden v. United States*, 194 F. 2d 508 (C. A. 6).

The judgment of the district court is affirmed for the reasons set forth by Judge Koscinski in his order denying judgment of acquittal and finding appellant guilty of the offense as charged in the indictment.

Clerk's Certificate to foregoing transcript omitted in printing.

100a

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1954

No. 69

[Title omitted]

ORDER ALLOWING CERTIORARI--Filed October 14, 1954

The petition herein for a writ of certiorari to the United States Court of Appeals for the Sixth Circuit is granted, and the case is transferred to the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(8435)